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Title 25

Alcoholic Beverages

to

Title 28

Commercial Instruments and Transactions
(Subtitle I, Articles 1 to 3)

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PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2014.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and http://dcclims1.dccouncil.us/lims.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council Website at http://www.dccouncil.us.

Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

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§ 25-101. Definitions.

For the purposes of this title, the term:

(1) "ABRA" means the Alcoholic Beverage Regulation Administration established by § 25-202.

(2) "ABRA Fund" means the Alcoholic Beverage Regulation Administration Fund established by § 25-210.

(3) "Adult" means a person who is 21 years of age or older.

(4) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever processes produced.

(5) "Alcoholic beverage" means a liquid or solid, patented or not, containing alcohol capable of being consumed by a human being. The term "alcoholic beverage" shall not include a liquid or solid containing less than one-half of 1% of alcohol by volume.

(6) "Applicant" means, as the context requires, the individual applicant, each member of an applicant partnership or limited liability company, or each of the principal officers, directors, and shareholders of an applicant corporation, or, if other than an individual, the applicant entity.

(7) "ANC" means an Advisory Neighborhood Commission as authorized under D.C. Official Code § 1-207.38.

(8) "Back-up drink" means a drink, including a single drink consisting of more than one alcoholic beverage, that is served to a customer before the customer has consumed a previously served drink.

(9) "Bartender" means a person who fixes, mixes, makes, or concocts an alcoholic beverage for consumption.

(10) "Beer" means a fermented beverage of any name or description manufactured from malt, wholly or in part, or from any substitute for malt.

(11) "Board" means the Alcoholic Beverage Control Board established by § 25-201.

(12) "Brew pub" means an establishment for the manufacture of beer to be sold for consumption only at the place of manufacture and for sale to licensed wholesalers for the purpose of resale to other licensees.

(13) "Business days" means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays.

(14) "Caterer" means a corporation, partnership, individual, or limited liability company that prepares, sells, delivers, and serves food and beverages to its customers, under an agreement in advance of delivery, for a catered event on the premises designated by the customer for the duration of the catered event.

(15) "Club" means a corporation, duly organized and in good standing under Chapters 1 and 4 of Title 29, owning, leasing, or occupying a building, or a portion thereof, at which the sale of alcoholic beverages is incidental to, and not the prime source of revenue from, the operation of the building or the portion thereof. The term "club" shall not include a college fraternity or sorority.

(15A) "Cooperative agreement" shall have the same meaning, and is synonymous with, settlement agreement.

(16) "Credit card" means a consumer credit card extended on a nationally recognized account pursuant to a plan under which:

(A) The creditor may permit the customer to make purchases or obtain loans by the use of a credit card, check, or other device as the plan may provide;

(B) The customer has the privilege of paying the balance in full or in installments; and

(C) A finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(17) "CSA" means Chapter 9 of Title 48.

(18) "DC Arena" means the multi-purpose arena for the performance of sports and entertainment events and related amenities described in recital "E" of the Land Disposition Agreement-Ground Lease By and Among the District of Columbia Redevelopment Land Agency, the District of Columbia, and DC Arena L.P., dated December 29, 1995.

(19) "Director" means the Director of the Alcoholic Beverage Regulation Administration appointed under § 25-207.

(19A) "Distillery pub" means a craft distillery establishment for the manufacture, blending, and rectification of spirits to be sold for on-premises

consumption only at the place of manufacture or to licensed wholesalers for the purpose of resale to other licensees, or patrons for off-premises consumption.

(20) "District" means the District of Columbia.

(21) "Establishment" means a business entity operating at a specific location.

(21A) "Entertainment" means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term "entertainment" shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.

(21B) "Farm winery" means a winery where at least 51% of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm.

(22) "Food" means any substance consumed by human beings except alcoholic beverages and any nonalcoholic liquid or solid substance served as part of the contents of an alcoholic beverage drink.

(23) "Go-cup" means a drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment.

(24) "Gross annual receipts" means the total amount of money received during the most recent one-year accounting period for the sale of food and alcoholic beverages, not including the amount received for taxes and gratuities in conjunction with sales or charges for entertainment or other services. Gross annual receipts are subject to audit and examination under § 25-802.

(24A) "Gross annual food sales" means the total amount of food sold during the most recent one-year accounting period. Gross annual food sales are subject to audit and examination under § 25-802.

(24B) "Growler" means a reusable container that is capable of holding up to 64 fluid ounces of beer and is designed to be filled and sealed on premises for consumption off premises.

(25) "Hotel" means an establishment where food and lodging are regularly furnished to transients and which has at least 30 guest rooms and a dining room in the same or connecting buildings.

(26) "Interest" includes the ownership or other share of the operation, management, or profits of a licensed establishment. The term "interest" shall not include an agreement for the lease of real property.

(27) "Keg" means a container which is capable of holding 4 gallons or more of beer, wine, or spirits and which is designed to dispense beer, wine, or spirits directly from the container.

(28) "Land Disposition Lease" means the Land Disposition Agreement-Ground Lease By and Among the District of Columbia Redevelopment Land Agency, the District of Columbia, and DC Arena L.P., dated December 29, 1995.

(29) "Legal drinking age" means 21 years of age.

(30) "Legitimate theater" means premises in which the principal business shall be the operation of live theatrical, operatic, or dance performances, or such other lawful adult entertainment or recreational facilities as the Board, giving due regard to the convenience of the public and the strict avoidance of sales prohibited by this title, shall, by regulation, classify as legitimate theater. The term "legitimate theater" shall not mean a motion picture theater.

(31) "Locality" means the neighborhood within 600 feet of an establishment.

(32) "Manufacture" includes any purification or repeat distillation processes or rectification.

(32A) "Miniature" means an alcoholic beverage in a sealed container holding 50 milliliters or less.

(33) "Nightclub" means a space in a building, and the adjoining space outside of the building, regularly used and kept open as a place that serves food and alcoholic beverages and provides music and facilities for dancing.

(34) "Nude performance" means dancing or other entertainment by a person whose genitals, pubic region, or anus are less than completely and opaquely covered and, in the case of a female, whose breasts are less than completely and opaquely covered below a point immediately above the top of the areola.

(35) "Open container" means a bottle, can, or other container that is open or from which the top, cap, cork, seal, or tab seal has at some time been removed.

(35A) "Overconcentration" means the existence of several licensed establishments that adversely affect a specific locality, section, or portion of the District of Columbia, including consideration of the appropriateness standards under § 25-313(b).

(36) "Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the District.

(37) "Person" includes an individual, partnership, corporation, limited liability company, and an unincorporated association.

(37A) "Pool buying agent" means the licensed vendor who is registered by the pool buying group with the Alcoholic Beverage Regulation Administration.

(37B) "Pool buying group" means a group of 2 or more licensees under an on-premises restaurant license (R), as defined in § 25-113(b), who have been approved by the Alcoholic Beverage Regulation Administration to consolidate orders for alcoholic beverages ordered through a licensed pool buying agent from any lawful source in a single order.

(38) "Portion" means the neighborhood within 1800 feet of an establishment.

(39) "Protest" means a written statement in opposition to the issuance of a license.

(40) "Protest hearing" means the adjudicatory proceeding held by the Board, after receipt of a protest, to hear persons objecting to, or in support of, the issuance of a license.

(41) "Protest period" means a 45-day period during which an objection to the issuance or renewal, substantial change in operation under § 25-404, or transfer to new location, may be filed.

(42) "Residential districts" means those districts identified as residential by the zoning regulations and the official atlases of the Zoning Commission for the District of Columbia.

(43) Restaurant means a space in a building which shall:

(A)(i) Be regularly ready, willing, and able to prepare and serve food, have a kitchen which shall be regularly open, have a menu in use, have sufficient food on hand to serve the patrons from the menu, and have proper staff present to prepare and serve the food;

(ii) Be held out to and known by the public as primarily a food-service establishment;

(iii) Have all advertising and signs emphasize food rather than alcoholic beverages or entertainment;

(iv) Be open regular hours that are clearly marked with no unusual barriers to entry (such as cover charges or membership requirements);

(v) Have its kitchen facilities open until at least 2 hours before closing;

(vi) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or offering facilities for dancing;

(vii) If possessing an entertainment endorsement, be permitted to charge a cover and advertise entertainment, but shall not primarily advertise drink specials;

(viii) Be permitted to have recorded and background music without obtaining an entertainment endorsement;

(ix) Not have nude performances; and

(x) Have annual gross food sales of $1500 or $2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy), depending on license class; or

(B)(i) Have adequate kitchen and dining facilities;

(ii) Keep its kitchen facilities open until 2 hours before closing;

(iii) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or having facilities for dancing;

(iv) Be permitted to have recorded and background music without obtaining an entertainment endorsement;

(v) Not have nude performances; and

(vi) Have the sale of food account for at least 45% of the establishment's gross annual receipts.

(C) Any licensee operating under a C/R, Do/R, C/H, or D/H license who is not in compliance with the food sales requirements of this paragraph as of [September 30, 2004], shall be permitted to maintain its current license and operations for a period of 2 years from [September 30, 2004]; provided, that there is no substantial change in operations during that period without a substantial change application.

(44) "RLA" means the District of Columbia Redevelopment Land Agency.

(45) "Sale" or "sell" includes offering for sale, keeping for sale, manufacturing for sale, soliciting orders for sale, trafficking in, importing, exporting, bartering, delivering for value or in any way other than by purely gratuitously transferring. Every delivery of any alcoholic beverage made otherwise than purely gratuitously shall constitute a sale.

(46) "Section" means the neighborhood within 1,200 feet of an establishment.

(47) "Settlement conference" means a meeting between the applicant and the protestants held for the purpose of discussing and resolving, where possible, the objections raised by the protestants.

(48) "Sign" shall have the same meaning as defined in Chapter 31 of Title 12 of the District of Columbia Municipal Regulations.

(48A) "Southeast Federal Center" means the area as defined in section 2 of the Southeast Federal Center Public-Private Development Act of 2000, approved November 1, 2000 (Pub. L. No. 106-407; 114 Stat. 1758), and Chapter 18 of Title 11 of the District of Columbia Municipal Regulations [CDCR 11-1800].

(49) "Spirits" means:

(A) A beverage which contains alcohol mixed with water and other substances in solution, including brandy, rum, whisky, cordials, and gin; and

(B) An alcoholic beverage containing more than 15% alcohol.

(50) "Statement" means a representation by words, design, picture, device, illustration, or other means.

(51) "Table" shall not include a counter, bar, or similar contrivance.

(52) "Tavern" means a space in a building which:

(A) Is regularly used and kept open as a place where food and alcoholic beverages are served;

(B) May offer entertainment, except nude performances, and offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement; and

(C) Does not provide facilities for dancing for its employees or entertainers.

(53) "Valid identification document" means an official identification issued by an agency of government (local, state, federal, or foreign) containing, at a minimum, the name, date of birth, signature, and photograph of the bearer.

(54) Repealed.

(55) Repealed.

(56) "Wine" means an alcoholic beverage containing not more than 15% alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 1; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Sept. 29, 1982, D.C. Law 4-157, §§ 2, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law 5-16, § 2, 30 DCR 3193; May 23, 1986, D.C. Law 6-119, § 2, 33 DCR 2447; Mar. 7, 1987, D.C. Law 6-217, § 2, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(a), 38 DCR 4974; Oct. 3, 1992, D.C. Law 9-174, § 2(a), 39 DCR 5859; Sept. 11, 1993, D.C. Law 10-12, § 2(a), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(a), 41 DCR 1658; Apr. 12, 1997, D.C. Law 11-258, § 2(a), 44 DCR 1421; Mar. 26, 1999, D.C. Law 12-202,§ 2(a), 45 DCR 8412; Mar. 26, 1999, D.C. Law 12-206, § 2(a), 45 DCR 8430; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct.

3, 2001, D.C. Law 14-28, § 3002(a), 48 DCR 6981; Oct. 1, 2002, D.C. Law 14-190, § 1702(a), 49 DCR 6968; Sept. 30, 2004, D.C. Law 15-187, §§ 301(b), 401(b), 51 DCR 6525; Mar. 2, 2007, D.C. Law 16-191, § 47(b), 53 DCR 6794; July 18, 2008, D.C. Law 17-201, § 2(b), 55 DCR 6289; Mar. 3, 2010, D.C. Law 18-111, § 2082(n)(1), 57 DCR 181; July 2, 2011, D.C. Law 18-378, § 3(f), 58 DCR 1720; Oct. 20, 2011, D.C. Law 19-23, § 2(a), 58 DCR; May 1, 2013, D.C. Law 19-310, § 2(a), 60 DCR 3410; Feb. 22, 2014, D.C. Law 20-78, § 2(a), 61 DCR 151.)

Section references. — This section is referenced in § 7-742, § 7-745, § 7-1702, § 7-1708, § 25-112, § 25-113, and § 25-723.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 rewrote (15A), (34), (49)(B), and (56); repealed (54); and added (24B), (32A), and (35A).

The 2014 amendment by D.C. Law 20-78 added (19A).

Emergency legislation.

For temporary amendment of section, see § 2(a) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 284(d) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

For temporary (90 days) amendment of this section, see § 2(a) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — Law 19-310, the "Omnibus Alcoholic Beverage Regulation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-824. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 11, 2013, it was assigned Act No. 19-678 and transmitted to Congress for its review. D.C. Law 19-310 became effective on May 1, 2013.

Legislative history of Law 20-78. — Law 20-78, the "Distillery Pub Licensure Act of 2013," was introduced in Council and assigned Bill No. 20-29. The Bill was adopted on first and second readings on November 5, 2013, and December 3, 2013, respectively. Signed by the Mayor on December 27, 2013, it was assigned Act No. 20-248 and transmitted to Congress for its review. D.C. Law 20-78 became effective on February 22, 2014.

CASE NOTES

Retroactive application.

The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

Subchapter II. Classification of Licenses and Permits.

§ 25-110. Manufacturer's licenses.

(a) The following licenses shall be issued to manufacturers of alcoholic beverages:

(1)(A) A manufacturer's license, class A, shall authorize the licensee to:

(i) Operate a rectifying plant, at the place therein described, for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; and

(ii) Sell the products manufactured under the license from the licensed establishment to another licensee under this title for resale or to a dealer licensed under the law of any state or territory of the United States for resale or to a consumer. The licensee may sell spirits to the consumer only in

barrels and sealed bottles, which shall not be opened after sale or the contents consumed on the premises where sold.

(B) A manufacturer operating a facility where more than 50% of alcohol produced is sold for nonbeverage purposes qualifies for a reduced license rate.

(2)(A) A manufacturer's license, class B, shall authorize the licensee to operate a brewery for the manufacture of beer at the establishment described in the license.

(B) The license shall authorize the licensee to sell the beer manufactured under the license to (i) another licensee under this title for resale; (ii) to a dealer licensed under the laws of any state or territory of the United States for resale; and (iii) to a consumer. The licensee may sell beer to the consumer only in barrels, kegs, and sealed bottles, which shall not be opened after sale, or the contents consumed, on the premises where sold.

(b) A separate license shall be required for each establishment under subsection (a)(1)(A)(i) of this section.

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 20, 2012, D.C. Law 19-168, § 2112(a), 59 DCR 8025.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-168, in (a)(1)(A)(ii), added "or to a consumer" in the first sentence and added the second sentence.

Emergency legislation.

For temporary amendment of the subchapter heading, see § 2(b) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of the subchapter II heading, see § 2(b) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Amendment Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-168. — Law 19-168, the "Fiscal Year 2013 Budget Support Act of 2012," was introduced in Council and assigned Bill No. 19-743. The Bill was adopted on first and second readings on May 15, 2012, and June 5, 2012, respectively. Signed by the Mayor on June 22, 2012, it was assigned Act No. 19-385 and transmitted to Congress for its review. D.C. Law 19-168 became effective on September 20, 2012.

Legislative history of Law 19-310. — See note to § 25-101.

Editor's notes. — Section 2(b) of D.C. Law 19-310 added "and Permits" in the subchapter heading.

CASE NOTES

Retroactive application.
The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

§ 25-112. Off-premises retailer's licenses.

(a) An off-premises retailer's license shall authorize the licensee to sell alcoholic beverages from the place described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, including the sale of growlers by the holder of an off-premise retailer licensee, class A, notwithstanding any other provision or restrictions of this title.

(a-1)(1) An off-premises retailer's licensee, class B, that is also a full-service grocery store meeting the requirements of § 25-331(d), may also sell beer in growlers.

(2)(A) The Board shall promulgate rules within 45 days of [January 14, 2013], to provide a definition of "full-service grocery store" as used in this title.

(B) Notwithstanding subchapter III of Chapter 3 of this title, the Board shall not issue any new full-service grocery store, off-premises retailer's class B licenses for 45 days from [January 14, 2013] or until the rulemaking required by this paragraph has been promulgated and approved by the Council, whichever date is sooner.

(C) Upon approval by the Council of the regulations promulgated by the Board pursuant to this paragraph, the Council shall incorporate the definition of "full-service grocery store" into § 25-101.

(b) The barrel, keg, sealed bottle, or other closed container shall not be opened, except for the sale of growlers, or the contents consumed, at the licensed establishment.

(c) The license shall not authorize the licensee to sell to other licensees for resale; provided, that the licensee under an off-premises retailer's license, class A, may sell to:

(1) Caterers licensed under § 25-113(i);

(2) [Expired];

(2A) Licensees under a temporary license or an on-premises retailer's license, class C or D, if the alcoholic beverages were purchased by the off-premises retailer from a licensee under a wholesaler license or brought into the District under a validly issued import permit; provided, that the sales to an on-premises retailer's class C and D license, may be made only on a Saturday, Sunday, or holiday during the hours when licensees under a wholesaler's license are closed; provided further, that an on-premises retailer's licensee shall maintain on the licensed premises for 3 years either a receipt or invoice containing:

(A) The date of the purchase;

(B) The quantity and brand name of the alcoholic beverages purchased; and

(C) The name of the on-premises licensee to which the sale was made; and

(3) If the licensee that is a member of a pool buying group, to other members of the same pool buying group any alcoholic beverages if:

(A) A pool member other than the buying agent transfers to another pool member any portion of the alcoholic beverages ordered by the transferee retailer as part of the single transaction pool purchase;

(B) A transfer pursuant to this section is made within 7 days of the pool delivery without any cost or charge whatsoever being made against the transferee retailer;

(C) The acquisition of alcoholic beverage products is recorded in an invoice maintained by both participating retailers for 3 years and includes:

(i) Business name, address, and license number of each licensee;

(ii) Names, sizes, and quantities of the products transferred;

(iii) Date that the delivery of products was received;

(iv) Date that the physical transfer of products was made;

(v) Unique identifier that links the record with a specific pool order; and

(vi) The resale certificate number of the licensee acquiring the products for resale.

(d) There shall be 2 classes of off-premises retailer's licenses:

(1) A retailer's license, class A, shall authorize the licensee to sell spirits, beer, and wine.

(2) A retailer's license, class B, shall authorize the licensee to sell beer and wine.

(e) The licensee under an off-premises retailer's license, class B, who qualifies for the license as a result of the application of § 25-303(c), § 25-331(d), § 25-332(c), or § 25-333(c), shall:

(1) File with the Board, within 60 days after the end of each year, a statement of expenditures and receipts by the licensed establishment containing the following:

(A) The total amount of receipts for the sale of alcoholic beverages, indicating the amount received for the sale of alcoholic beverages, the amount received for the sale of food, and the percentage of the total amount of receipts represented by each amount;

(B) A statement indicating the method used to compute the amounts and percentages; and

(C) An affidavit, executed by the individual licensee, partner of an applicant partnership, or the appropriate officer of an applicant corporation or limited liability company, attesting to the truth of the annual statement.

(2) The annual accounting period, for the purposes of the annual report, shall correspond to each of the 3 years for which a license is issued.

(3) The making of a false statement on an annual statement shall constitute grounds on which the Board may deny the renewal of a license, or subsequently revoke the license, if the renewal of the license is based in whole or in part on the contents of the false statement.

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359;

Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, §§ 101(b), 401(d), 51 DCR 6525; May 1, 2013, D.C. Law 19-310, § 2(c), 60 DCR 3410.)

Section references. — This section is referenced in § 2-1212.01, § 8-102.01, and § 25-332.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added "including the sale of growlers by the holder of an off-premise retailer licensee, class A, notwithstanding any other provision or restrictions of this title" in (a); added (a-1); added "except for the sale of growlers" in (b); and added (c)(2A) and made a related change.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(c) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-113. On-premises retailer's licenses.

(a)(1) On-premises retailer's licenses shall be classified by the type of establishment licensed, as follows: restaurant, tavern, nightclub, hotel, club, multipurpose facility, and common carrier.

(2) For each type of establishment listed in paragraph (1) of this section, there shall be 2 classes of on-premises retailer's license:

(A)(i) Except as otherwise provided, an on-premises retailer's license, class C, shall authorize the licensee to sell spirits, wine, and beer at the licensed establishment for consumption only at the licensed establishment.

(ii) It shall be a secondary tier violation for an on-premises retailer's class C or D licensee, to knowingly allow a patron to exit the licensed establishment with an alcoholic beverage in an open container.

(B) Except as otherwise provided, an on-premises retailer's license, class D, shall authorize the licensee to sell wine and beer at the licensed establishment for consumption only at the licensed establishment.

(3) The licensee of any kind of on-premises retailer's licenses, class C or D, shall not sell or serve alcoholic beverages in any closed container; provided that:

(A) A hotel may sell and serve alcoholic beverages in closed containers in the private rooms of registered guests; and

(B) A club may sell and serve alcoholic beverages in closed containers in any room or area available only to members of the club or their guests.

(4)(A) Except as provided in subparagraph (B) of this paragraph, nothing in the license classifications in this section shall be construed as prohibiting or restricting a restaurant from offering entertainment or facilities for dancing, preventing or restricting a tavern from offering entertainment, or preventing or restricting a nightclub from offering food. A licensee who offers food, entertainment, or facilities for dancing may advertise the food, entertainment, or facilities for dancing that are offered, regardless of the kind of license held.

(B) No licensed establishment other than a nightclub or a legitimate theater may provide entertainment by nude performers.

(b)(1) A restaurant license (R) shall be issued only for a restaurant. It shall be a secondary tier violation for a restaurant to not keep its kitchen facilities open until 2 hours before closing.

(2)(A) The licensee shall file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, reporting for the preceding quarter: the gross receipts for the establishment; its gross receipts for sales of alcoholic beverages; its gross receipts for the sale of food; its total expenses for the purchase of food and alcoholic beverages; its expenses for the purchase of food; and its expenses for the purchase of alcoholic beverages.

(B) The Board shall make a licensee's quarterly statements available for the purpose of allowing a protestant of a license to determine the gross annual receipts of a licensee.

(3)(A) There shall be 2 classes of restaurant licenses:

(i) Class C/R (spirits, wine, and beer); and

(ii) Class D/R (wine and beer).

(B)(i) A class C/R license may be issued to:

(I) An establishment which qualifies as a restaurant under § 25-101(43)(A) and has gross annual food sales of at least $2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment which qualifies as a restaurant under § 25-101(43)(B).

(ii) A class D/R license may be issued to:

(I) An establishment which qualifies as a restaurant under § 25-101(43)(A) and has gross annual food sales of at least $1500 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment which qualifies as a restaurant under § 25-101(43)(B).

(iii) The Board shall, by rule, adjust for inflation the gross annual food sales per occupant requirements established under subparagraphs (B)(i)(I) and (B)(ii)(I) of this paragraph once every 5 years. The first adjustment shall be effective January 1, 2010. In determining the appropriate inflation index to be applied, the Board may consider the inflation indices customarily employed by the federal and District governments for similar purposes.

(4) The Board, in its sound discretion, may require that a restaurant (R) licensee file a security plan with the Board. A restaurant (R) licensee so required shall comply with the terms of its security plan.

(5)(A) Notwithstanding any other provision of this subchapter, a restaurant license (R) under this section shall authorize the licensee to permit a patron to remove one partially consumed bottle of wine for consumption off premises.

(B) A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employee before removal from the premises.

(C) The partially consumed bottle shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine shall be provided by the licensee and attached to the container.

(c)(1) A tavern license (T) shall be issued only for a tavern.

(2) The size of the dance floor in a tavern that does not possess an entertainment endorsement shall not exceed 140 square feet; provided, that the licensee whose establishment on September 30, 1986 contained a regularly used dance floor in excess of 140 square feet and who is occupying the same establishment shall not be disqualified under this limitation.

(3) There shall be 2 classes of tavern licenses:

(A) Class C/T (spirits, wine, and beer); and

(B) Class D/T (beer and wine).

(4) The Board, in its sound discretion, may require that a tavern (T) licensee file a security plan with the Board. A tavern (T) licensee so required shall comply with the terms of its security plan.

(d)(1) A nightclub license (N) shall be issued only to a nightclub with a security plan. The holder of a nightclub license shall comply with the terms of its security plan.

(2) There shall be two classes of nightclub licenses:

(A) Class C/N (spirits, wine, and beer); and

(B) Class D/N (beer and wine).

(e)(1) A hotel license (H) shall be issued only for a hotel license.

(2) The license shall authorize the sale and service of alcoholic beverages for consumption in the dining rooms, lounges, banquet halls, and other similar facilities on the licensed premises, and in the private rooms of registered guests.

(3) The license shall not authorize the sale and service of alcoholic beverages for consumption in a nightclub on the premises of the hotel. The licensee may also be issued a nightclub license on the premises of the hotel.

(4)(A) The licensee shall file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, reporting for the preceding quarter: the gross receipts for the establishment; its gross receipts for sales of alcoholic beverages; its gross receipts for the sale of food; its total expenses for the purchase of food and alcoholic beverages; its expenses for the purchase of food; and its expenses for the purchase of alcoholic beverages.

(B) The Board shall make a licensee's quarterly statements available for the purpose of allowing a protestant to determine the gross annual receipts of a licensee.

(5)(A) There shall be 2 classes of hotel licenses:

(i) Class C/H (spirits, beer, and wine); and

(ii) Class D/H (beer and wine).

(B)(i) A class C/H license may be issued to:

(I) An establishment that has annual gross food sales in a hotel dining room of at least $2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment that has sales of food in a hotel dining room which accounts for at least 45% of gross annual receipts from the operation of the dining room; provided, that in the case of a hotel that has 200 or fewer rooms and was built before January 1, 1940, sales of food shall account for at least 25% of gross annual receipts from the operation of the dining room.

(ii) A class D/H license may be issued to:

(I) An establishment that has annual gross food sales in a hotel dining room of at least $1500 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment that has sales of food in a hotel dining room which accounts for at least 45% of gross annual receipts from the operation of the dining room; provided, that in the case of a hotel that has 200 or fewer rooms and was built before January 1, 1940, sales of food shall account for at least 25% of gross annual receipts from the operation of the dining room.

(f)(1) A club license shall be issued only for a club.

(2) No license shall be issued to a club which has not been incorporated for at least one year immediately before the filing of an application for the license.

(3) The licensee may permit consumption of alcoholic beverages on the parts of the licensed premises as may be approved by the Board.

(4) There shall be 2 classes of club licenses:

(A) Class C (spirits, beer, and wine); and

(B) Class D (beer and wine).

(g)(1) A multipurpose facility license shall be issued only to legitimate theaters, universities, museums, conference centers, art galleries, or facilities (such as the Lincoln Theatre or the D.C. Arena) for the performance of sports, cultural, or tourism-related activities.

(2) The licensee may permit consumption of alcoholic beverages on the parts of the licensed premises as may be approved by the Board.

(3) There shall be 2 classes of multipurpose facility licenses:

(A) Class C (spirits, beer, and wine); and

(B) Class D (beer and wine).

(4) The Board, in its sound discretion, may require that a multipurpose facility licensee file a security plan with the Board. A multipurpose facility licensee so required shall comply with the terms of its security plan.

(h)(1) A common carrier license shall be issued only for a passenger-carrying marine vessel serving food or a railroad club or dining car.

(2) Any person operating a railroad in interstate commerce of 100 miles or more may be issued a single license covering all of the railroad's dining and club cars. The license shall identify the railroad dining cars and club cars covered by the license and shall be kept on display at the licensee's principal place of business in the District.

(3) Any person operating a passenger-carrying marine vessel line in the District may be issued a single license covering all of its passenger-carrying marine vessels serving food and its dockside waiting areas for its passengers. The license shall identify the passenger-carrying marine vessels and dockside waiting areas covered by the license and shall be kept on display at the licensee's principal place of business in the District. The license issued shall not cover any permanently berthed vessel.

(4) There shall be 2 classes of common carrier licenses:

(A) Class C (spirits, beer, and wine); and

(B) Class D (beer and wine).

(i)(1) A caterer's license shall be issued only to a caterer.

(2) Notwithstanding any provision of this title, a caterer's license under this subsection shall authorize the licensee to sell, deliver and serve alcoholic beverages for consumption on the premises of a catered event at which the licensee is also serving prepared food.

(3) A caterer's license shall be valid for 3 years.

(4) A caterer licensed under this subsection shall file records with, and maintain records for inspection by, the Board in such manner as the Board shall determine by regulation promulgated under § 25-211(b); provided, that commercial or financial information considered by the Board to be proprietary information or trade secrets, the disclosure of which would result in harm to the competitive position of the licensee, shall not be made available to the public.

(5) Wholesalers and off-premises retailers, class A, may sell alcoholic beverages to caterers licensed under this subsection for catered events of 100 persons or less. Only off-premises retailers, class A, may sell alcoholic beverages to caterers licensed under this subsection for catered events in excess of 100 persons. A caterer that also holds an on-premises retailer's license may purchase alcoholic beverages from wholesalers for use at catered events regardless of the number of persons attending the event.

(j)(1) Cover charges or the sale of items other than food or beverage shall not be included in determining an establishment's gross annual food sales or whether the sale of food accounts for at least 45% of the establishment's gross annual receipts; provided, that minimum charges that are readily identifiable as food or beverage shall be included in calculating whether the establishment is meeting the food sales requirements set forth in § 25-101(43) and this section.

(2) Off-site food sales by a licensee under a license, class C/R, D/R, C/H, or D/H, shall also not be included for purposes of calculating whether the establishment is meeting the food sales requirement set forth in either § 25-101(43) or this section.

(3)(A) Each licensee under a license, class C/R, D/R, C/H, or D/H, shall keep and maintain on the premises for a period of 3 years adequate books and records showing all sales, purchase invoices, and dispositions, including the following:

(i) Sales information that includes the date, the price of food sold, the price of alcoholic beverages sold, and the amount of total sales;

(ii) Purchase information that includes the date and quantity of the purchase, the name, address, and phone number of the wholesaler and or vendor with the original invoice; and

(iii) Register receipts or guest checks, which may be kept daily or weekly that include the food sold, the alcoholic beverages sold, and the amount of total sales.

(B) Any licensee may file a written request with the Board to have his books and records, except the day to day records or register receipts, kept at an accountant's office or the licensee's office; provided, that the records are made available within 3 days of request by ABRA staff. A licensee may also store its books and records on the premises electronically. The records stored on the premises electronically shall be made immediately available at the request of ABRA staff.

(C) The failure of a licensee under a license, class C/R, D/R, C/H, or D/H, to keep and maintain records as required by this section shall be subject to the following penalties:

(i) One-quarter of non-compliance shall result in a penalty not to exceed $3,000 and ABRA monitoring;

(ii) Non-compliance after 2 quarters shall result in a penalty not to exceed $4,500 or license suspension for a period not to exceed 5 days; or

(iii) Non-compliance after 3 or more quarters shall result in a show cause hearing for revocation or a mandatory change in license class.

(D) A violation of this section shall also be a primary tier violation under § 25-830(c).

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, §§ 101(c), 301(c), 51 DCR 6525; Apr. 13, 2005, D.C. Law 15-354, § 102(a)(2), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 47(c), 53 DCR 6794; July 18, 2008, D.C. Law 17-201, § 2(c), 55 DCR 6289; Mar. 25, 2009, D.C. Law 17-353, § 241, 56 DCR 1117; Mar. 25, 2009, D.C. Law 17-361, § 2(a), 56 DCR 1204; Mar. 3, 2010, D.C. Law 18-111, § 2082(n)(2), 57 DCR 181; May 1, 2013, D.C. Law 19-310, § 2(d), 60 DCR 3410.)

Section references. — This section is referenced in § 7-743, § 8-102.01, § 25-101, § 25-112, § 25-830, and § 47-2404.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 redesignated (a)(2)(A) as (a)(2)(A)(i) and added (a)(2)(A)(ii); added the last sentence in (i)(5); and added the last two sentences in (j)(3)(B).

Emergency legislation.

For temporary amendment of (a), (i), and (j), see § 2(d) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(d) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-115. Temporary license requirements and qualifications.

(a) A temporary license shall authorize the licensee temporarily to sell or permit the consumption of alcoholic beverages at the specific premises described for consumption on the premises where sold. The license may be issued for a banquet, picnic, bazaar, fair, or similar public gathering where food is served for consumption on the premises. No alcoholic beverages shall be sold or served to a customer in an unopened container.

(b) A temporary license shall be issued for no more than 4 consecutive days.

(c) The issuance of a temporary license shall be solely in the discretion of the Board.

(d) If the applicant has failed to control the environment of a previous event associated with a temporary license or has sustained community complaints or police action, the Board may deny the license application.

(e) There shall be 2 classes of temporary licenses:

(1) Class F (beer and wine); and

(2) Class G (spirits, beer, and wine).

(f) The holder of a temporary license shall be permitted to receive deliveries from a wholesaler up to 48 hours before a Board-approved event occurring on a Saturday, Sunday, or holiday. The alcoholic beverages delivered pursuant to this subsection shall not be consumed until the date and time of the event and shall be stored in a secure location.

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001,

D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 1, 2002, D.C. Law 14-190, § 1702(c), 49 DCR 6968; May 1, 2013, D.C. Law 19-310, § 2(e), 60 DCR 3410.)

Section references. — This section is referenced in § 1-309.10 and § 25-104.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (f).

Emergency legislation.

For temporary addition of (f), see § 2(e) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(e) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Applied in Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

§ 25-117. Brew pub permit requirements and qualifications.

(a) A brew pub permit shall authorize the licensee to brew malt beverages at one location for consumption at a licensed restaurant, tavern, multipurpose facility, hotel, or nightclub and for sale to licensed wholesalers for the purpose of resale to other licensees. The location used to brew malt beverages shall be on or immediately adjacent to the restaurant, tavern, multipurpose facility, hotel, or nightclub licensed to the brew pub owner in accordance with subsection (b) of this section.

(a-1) A brew pub permit shall authorize the licensee to sell beer in growlers.

(b) A brew pub permit shall be issued only to the licensee under an on-premises restaurant or tavern retailer's license, class C or D, or in conjunction with the issuance of an on-premises restaurant or tavern retailer's license, class C or D.

(c) A brew pub permit shall be cancelled or revoked if:

(1) The restaurant, tavern, multipurpose facility, hotel, or nightclub ceases to be operated as a restaurant or tavern; or

(2) The licensee's on-premises retailer license, class C or D, is revoked or cancelled.

(d) A brew pub permit shall be automatically suspended whenever and for the same period of time that the licensee's retailer's license, class C or D, is suspended.

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C.

Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(f), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted "restaurant, tavern, multipurpose facility, hotel, or nightclub" for "restaurant or tavern" in (a), (b), and (c)(1); added (a-1); and substituted "cancelled or revoked" for "void" in the introductory language of (c).

Emergency legislation. — For temporary amendment of (a)-(c) and addition of (a-1), see § 2(f) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(f) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-118. Tasting permit requirements and qualifications.

(a) A tasting permit shall be issued only to a licensee under a manufacturer's license, class A and B, a retailer's license, class A and B, or an applicant which is a full service grocery store and meets the requirements of § 25-303(c)(1), (2), and (3), to utilize a portion of their licensed premises for the tasting of products as listed in subsection (c) of this section.

(b) Containers of alcoholic beverages used for sampling purposes shall be labeled as such and may not be sold.

(c) A licensee shall not provide to a customer, in one day, samples greater than the following quantities:

(1) 3 ounces of spirits;

(2) 6 ounces of wines; and

(3) 12 ounces of beer.

(d) A tasting permit shall be valid for 3 years.

(e) The holder of a manufacturer's license, class A, may utilize a portion of the licensed premises for the sampling of spirits, and the holder of a manufacturer's license, class B, may utilize a portion of the licensed premises for the sampling of beer, between the hours of 1:00 p.m. and 9:00 p.m., 7 days a week.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, § 101(d), 51 DCR 6525; July 18, 2008, D.C. Law 17-201, § 2(e), 55 DCR 6289; Oct. 20, 2011, D.C. Law 19-25, § 2, 58 DCR 6513; Sept. 20, 2012, D.C. Law 19-168, § 2112(b), 59 DCR 8025; Feb. 22, 2014, D.C. Law 20-82, § 2, 61 DCR 175.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-168 substituted "class A and B" for "class B" following "manufacturer's license" in (a); and in (e), added "The holder of a manufacturer's license, class A, may utilize a portion of the licensed premises for the sampling of spirits, and" and added the comma following "sampling of beer."

The 2014 amendment by D.C. Law 20-82 substituted "7 days a week" for "Thursday through Saturday" in (e).

Legislative history of Law 19-168. — See note to § 25-110.

Legislative history of Law 20-82. — Law 20-82, the "Manufacturer Tasting Permit Act of 2013," was introduced in Council and assigned Bill No. 20-234. The Bill was adopted on first and second readings on November 5, 2013, and December 3, 2013, respectively. Signed by the Mayor on December 27, 2013, it was assigned Act No. 20-252 and transmitted to Congress for its review. D.C. Law 20-82 became effective on February 22, 2014.

§ 25-123. Farm winery retail license.

Emergency legislation. — For temporary addition of a section designated as § 25-124, concerning wine pub permit requirements and qualifications, see § 2(g) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

§ 25-124. Wine pub permit requirements and qualifications.

(a) A wine pub permit shall authorize the licensee to manufacture wine at one location from grapes or fruit transported from an area that produces wine to the licensed restaurant, tavern, multipurpose facility, hotel, or nightclub for on-premises consumption and for sale to licensed wholesalers for the purpose of resale to other licensees.

(b) A wine pub permit shall be issued only to the licensee under an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C or D, in conjunction with the issuance of an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C or D.

(c) The location used to manufacture wine shall be on or immediately adjacent to the restaurant, tavern, multipurpose facility, hotel, or nightclub licensed to the wine pub owner in accordance with subsection (b) of this section.

(d) The holder of a wine pub permit may also sell wine to patrons in sealed bottles or other closed containers for off-premises consumption.

(e) The minimum annual fee of the wine pub permit shall be $5,000.

(f) A wine pub permit shall be cancelled or revoked if:

(1) The restaurant, tavern, multipurpose facility, hotel, or nightclub ceases to be operated as a restaurant, tavern, multipurpose facility, hotel, or nightclub; or

(2) The licensee's on-premises retailer's license, class C or D, is revoked or cancelled.

(g) A wine pub permit shall be automatically suspended whenever and for the same period that the licensee's retailer's license, class C or D, is suspended.

(May 1, 2013, D.C. Law 19-310, § 2(g), 60 DCR 3410.)

Emergency legislation. — For temporary (90 days) addition of this section, see § 2(g) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Retroactive application.
The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

§ 25-125. Distillery pub permit requirements and qualifications.

(a) A distillery pub permit shall authorize the licensee to manufacture, blend, rectify, and store distilled spirits at one location from fruits, grains, neutral grain spirits, or distilled spirits transported from an area that produces distilled spirits to the licensed restaurant, tavern, multipurpose facility, hotel, or nightclub for on-premises consumption, and for sale to licensed wholesalers for the purpose of resale to other licensees.

(b) A distillery pub permit shall be issued only to the licensee under an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C, in conjunction with the issuance of an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C.

(c) The location used to manufacture or age distilled spirits shall be on or immediately adjacent to the restaurant, tavern, multipurpose facility, hotel, or nightclub licensed to the distillery pub owner in accordance with subsection (b) of this section.

(d) The holder of a distillery pub permit may also sell distilled spirits to patrons in sealed bottles or other closed containers for off-premises consumption; provided, that such sales shall be limited to the hours between 7:00 a.m. and midnight, 7 days a week.

(e) The minimum annual fee of the distillery pub permit shall be $7,500.

(f) A distillery pub permit shall be cancelled or revoked if:

(1) The restaurant, tavern, multipurpose facility, hotel, or nightclub ceases to be operated as a restaurant, tavern, multipurpose facility, hotel, or nightclub; or

(2) The licensee's on-premises retailer's license, class C, is revoked or cancelled.

(g) A distillery pub permit shall be automatically suspended whenever and for the same period that the licensee's on-premises retailer's license, class C, is suspended.

(Feb. 22, 2014, D.C. Law 20-78, § 2(b), 61 DCR 151.)

Legislative history of Law 20-78. — Law 20-78, the "Distillery Pub Licensure Act of 2013," was introduced in Council and assigned Bill No. 20-29. The Bill was adopted on first and second readings on November 5, 2013, and December 3, 2013, respectively. Signed by the Mayor on December 27, 2013, it was assigned Act No. 20-248 and transmitted to Congress for its review. D.C. Law 20-78 became effective on February 22, 2014.

CHAPTER 2. ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION.

§ 25-211. Regulations.

Section references. — This section is referenced in § 25-113, § 25-402, § 25-403, § 25-431, § 25-433, § 25-502, § 25-506, and § 25-830.

Emergency legislation.

For temporary addition of a section designated as § 25-212, concerning a new licensee and general public orientation class, see § 2(h) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

§ 25-212. New licensee and general public orientation class.

ABRA shall establish a new licensee orientation class that shall be available to licensees and the public at no charge. The class curriculum shall include the following:

(1) A review of relevant provisions contained in both this title and Title 23 of the District of Columbia Municipal Regulations;

(2) Noise abatement and sound management; and

(3) How to work proactively with Advisory Neighborhood Commissions, neighborhood and business groups, and residents.

(May 1, 2013, D.C. Law 19-310, § 2(h), 60 DCR 3410.)

Emergency legislation. — For temporary (90 days) addition of this section, see § 2(h) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Retroactive application.

The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

CHAPTER 3. REQUIREMENTS TO QUALIFY FOR LICENSE.

Subchapter I. Applicant Qualifications.

§ 25-301. General qualifications for all applicants.

(a) Before issuing, transferring to a new owner, or renewing a license, the Board shall determine that the applicant meets all of the following criteria:

(1) The applicant is of good character and generally fit for the responsibilities of licensure.

(2) The applicant is at least 21 years of age.

(3) The applicant has not been convicted of any felony in the 10 years before filing the application.

(4) The applicant has not been convicted of any misdemeanor bearing on fitness for licensure in the 5 years before filing the application.

(5) Except in the case of an application for a solicitor's license, the applicant is the true and actual owner of the establishment for which the license is sought, and he or she intends to carry on the business for himself or herself and not as the agent of any other individual, partnership, association, limited liability company, or corporation not identified in the application.

(6) The licensed establishment will be managed by the applicant in person or by a Board-licensed manager.

(7) The applicant has complied with all the requirements of this title and regulations issued under this title.

(a-1) To determine whether an applicant for a new license meets the criteria of subsection (a)(1) of this section, the Board shall examine records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant.

(b) Notwithstanding § 47-2861(1)(B), the Board shall not issue a license or permit to an applicant if the applicant has failed to file required District tax returns or owes more than $ 100 in outstanding debt to the District as a result of the items specified in § 47-2862(a)(1) through (9), subject to the exceptions specified in § 47-2862(b).

(c) To determine whether an applicant for a new retailer or wholesaler license meets the criteria of subsection (a)(3) and (4) of this section, the Board may obtain criminal history records of criminal convictions maintained by the Federal Bureau of Investigation and the Metropolitan Police Department. The Board shall:

(1) Inform the applicant that a criminal background check will be conducted;

(2) Obtain written approval from the applicant to conduct a criminal background check;

(3) Coordinate with the Metropolitan Police Department to obtain a set of qualified fingerprints from the applicant; and

(4) Obtain any additional identifying information from the applicant that is required for the Metropolitan Police Department and the Federal Bureau of Investigation to complete a criminal background check.

(d) The Board shall coordinate with the Metropolitan Police Department to adopt procedures necessary to facilitate this objective.

(e) The fingerprint card shall not be maintained by the Board or by the Metropolitan Police Department and shall be returned to the applicant after the completion of the criminal background check.

(f) Once notified, the Board shall seal, set aside, expunge, and otherwise maintain any record received pursuant to this section so that the record is in compliance with any order issued by the Superior Court of the District of Columbia pursuant to a sealing, set aside, or expungement statute, including Chapter 8 of Title 16 and Chapter 9 of Title 24. Once notified, the Board shall also seal, set aside, expunge, and otherwise maintain any record received pursuant to this section so that the record is in compliance with any court order or official government request or statement from the jurisdiction that is the source of that record.

(g) The Board shall maintain the confidentiality of any information returned from the Metropolitan Police Department and the Federal Bureau of Investigation and use such information only for the purpose of determining whether the applicant satisfies the criteria set forth in subsection (a)(3) and (4) of this section.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 2, 2007, D.C. Law 16-192, § 1012(a), 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-353, § 132, 56 DCR 1117; Nov. 6, 2010, D.C. Law 18-259, § 6, 57 DCR 5591; May 1, 2013, D.C. Law 19-310, § 2(i), 60 DCR 3410.)

Section references. — This section is referenced in § 25-316, § 25-402, § 25-405, § 25-406, and § 25-410.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (a-1).

Emergency legislation.

For temporary addition of (a-1), see § 2(i) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(i) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Retroactive application.

The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

Subchapter II. Qualification of Establishment.

§ 25-313. Appropriateness standard.

Section references. — This section is referenced in § 25-101, § 25-316, § 25-361, § 25-404, § 25-433, and § 25-446.

CASE NOTES

Analysis

Administrative procedure.
Judicial review.
Peace, order, and quiet.

Administrative procedure.

District of Columbia Alcoholic Beverage Control Board did not err by reconsidering its prior approval of a liquor license to an applicant because as recognized in case law, like any court, the Board has the power to reconsider any decision it makes, unless there is some statute or regulation that affirmatively forbids such action; thus, upon reconsideration, the Board may change any ruling. Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

Judicial review.

Order denying a night club's application for a liquor license did not contravene District of Columbia zoning law because the District of Columbia Alcoholic Beverage Control Board was required to give priority to nearby residence-district concerns over nightclub uses in areas zoned for commercial use, and the Board properly relied on the intervenors' complaints about the problems the prior night club had caused the residential neighborhood. Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

Peace, order, and quiet.

District of Columbia Alcoholic Beverage Control Board's conclusion that approving a night club's application would create more peace, order, and quiet problems than the neighborhood could handle was not speculative, but was derived rationally from the findings based on evidence that numerous complaints had been made with regard to individuals urinating, vomiting, defecating, littering, and engaging in sexual activity in the alley behind the building. Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

§ 25-314. Additional considerations for new license application or transfer of license to a new location.

Section references. — This section is referenced in § 25-404, § 25-433, and § 25-446.

CASE NOTES

Judicial review.

Order denying a night club's application for a liquor license was proper because D.C. Code § 25-314(a)(4) provided an explicit statutory basis for the District of Columbia Alcoholic Beverage Control Board to deny the night club's application on the ground that the neighborhood around the location did not have the capacity to deal with additional nightclub patrons. Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

Order denying a night club's application for a liquor license did not contravene District of Columbia zoning law because the District of Columbia Alcoholic Beverage Control Board was required to give priority to nearby residence-district concerns over nightclub uses in areas zoned for commercial use, and the Board properly relied on the intervenors' complaints about the problems the prior night club had caused the residential neighborhood. Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

§ 25-315. Additional considerations for renewal of licenses.

(a) If proper notice has been given, as provided in subchapter II of Chapter 4, and no objection to the appropriateness of the establishment is filed, the establishment shall be presumed to be appropriate for the locality, section, or portion of the District where it is located.

(b)(1) The Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.

(2) The Board shall prepare a check sheet documenting the licensee's compliance. This check sheet shall be available to the public for review.

(c) If an application for license renewal is made the subject of contested proceedings and the license expires before the Board's decision on the renewal application, the Board may extend the expiration date during the pendency of the decision on the renewal application.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(j), 60 DCR 3410.)

Section references. — This section is referenced in § 25-313, § 25-316, and § 25-433.

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted "settlement agreement" for "voluntary agreement" in (b)(1).

Emergency legislation. — For temporary amendment of (b)(1), see § 2(j) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(j) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter III. Denial of License.

§ 25-332. Moratorium on class B licenses.

(a)(1) After [May 1, 2013], the Board may issue new off-premises retailer's class B licenses, if the Board finds that the number of retailer's class B licenses is less than the quota set forth in § 25-331(b). A condition of the license shall be that the sale of alcoholic beverages for consumption off-premises shall

constitute no more than 25% of the total volume of gross receipts of the licensee on an annual basis.

(2) No more than one retailer's license, class B, issued under this subsection shall be issued to the same applicant or to an individual with an ownership interest in another license issued under this subsection.

(3) The issuance of new retailer's licenses, class B, under this subsection shall be audited by ABRA and subject to the reporting requirements set forth in § 25-112(e).

(b) The moratorium shall have a prospective effect.

(c) This moratorium shall not apply to an applicant for an off-premises retailer's license, class B, for the sale of alcoholic beverages in an establishment if:

(1) The primary business and purpose is the sale of a full range of fresh, canned, and frozen food items, and the sale of alcoholic beverages is incidental to the primary purpose;

(2) The sale of alcoholic beverages constitutes no more than 15% of the total volume of gross receipts on an annual basis;

(3) The establishment is located in a C-1, C-2, C-3, C-4, or C-5 zone or, if located within the Southeast Federal Center, in the SEFC/C-R zone;

(4) The establishment is a full service grocery store which is newly constructed with a certificate of occupancy issued after January 1, 2000, or is an existing store which has undergone renovations in excess of $500,000 during the preceding 12 months in which an application is made; and

(5) The opinion of the ANC, if any, has been given great weight.

(d) An exception to the moratorium shall be granted for 4 new class B licenses on Connecticut Avenue, N.W., between N Street and Florida Avenue, N.W., after October 22, 1999; provided, that no licensee shall devote more than 3,000 square feet to the sale of alcoholic beverages.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 1, 2002, D.C. Law 14-190, § 1702(g), 49 DCR 6968; Sept. 30, 2004, D.C. Law 15-187, § 101(l), 51 DCR 6525; Oct. 20, 2011, D.C. Law 19-23, § 2(e), 58 DCR 6509; May 1, 2013, D.C. Law 19-310, § 2(k), 60 DCR 3410.)

Section references. — This section is referenced in § 25-112.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 rewrote (a), which read: "No new off-premises retailer's license, class B, shall be issued."

Emergency legislation.

For temporary amendment of (a), see § 2(k) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(k) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-340. Special restrictions for Ward 4. [Repealed].

Repealed.

(Sept. 30, 2004, D.C. Law 15-187, § 101(o), 51 DCR 6525; Sept. 26, 2012, D.C. Law 19-171, § 81(a), 59 DCR 6190.)

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 25-341. Targeted Ward 4 Moratorium Zone. [Repealed].

Repealed.

(Sept. 30, 2004, D.C. Law 15-187, § 101(o), 51 DCR 6525; Aug. 15, 2008, D.C. Law 17-211, § 2(c), 55 DCR 6984; Sept. 26, 2012, D.C. Law 19-171, § 81(b), 59 DCR 6190.)

Legislative history of Law 19-171. — See note to § 25-340.

Subchapter IV. Board-Created Moratoria.

§ 25-351. Board-created moratoria.

Section references. — This section is referenced in § 25-601.

CASE NOTES

Scope of authority.

Order denying a night club's application for a liquor license was proper because D.C. Code § 25-314(a)(4) provided an explicit statutory basis for the District of Columbia Alcoholic Beverage Control Board to deny the night club's application on the ground that the neighborhood around the location did not have the capacity to deal with additional nightclub patrons. Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

Subchapter VI. Moratorium on Establishments Which Permit Nude Dancing.

§ 25-374. Transfer of location of establishments which permit nude dancing.

(a) A license under § 25-371(b) may only be transferred to a location in the Central Business District or, if the licensee is currently located in a CM or M-zoned district, transferred within the same CM or M-zoned district, as identified in the zoning regulations of the District of Columbia and shown in the official atlases of the Zoning Commission of the District of Columbia; provided, that no license shall be transferred to any premises which is located:

(1) Six hundred feet or less from another licensee operating under § 25-371(b); and

(2) Six hundred feet from a building with a certificate of occupancy for residential use or a lot or building with a permit from the Department of Consumer and Regulatory Affairs for residential construction at the premises.

(a-1) On or after January 1, 2013, a class CN license with a nude dancing endorsement under § 25-371(b) shall not be transferred into Ward 5, as

defined by [§ 1-1041.03]; provided, that this section shall not prohibit the transfer of an existing CN license with a nude dancing endorsement within Ward 5.

(b)(1) Notwithstanding the restrictions of subsection (a) and (a)(1) of this section, but subject to the provisions in subsection (a)(2) of this section, if a licensee was located in a CM or M-zoned district, in or within 2000 feet of the footprint of the Ballpark, as of January 1, 2006, or was located within the Skyland Development Project site as described in § 2-1219.19(c)(1) [repealed], as of January 1, 2007, then within one year of [October 18, 2007] a license may be transferred to:

(A) A location in any CM or M-zoned district, if the licensee was located in a CM or M-zoned district, respectively, as identified in the zoning regulations of the District of Columbia and shown in the official atlases of the Zoning Commission of the District of Columbia;

(B) A location in any CM-zoned district, if the licensee was located within the Skyland Development Project site; or

(C) In any C-3, C-4, or C-5 zone within 5000 feet from the Ballpark footprint.

(2) For the purposes of this subsection, the term "Ballpark" shall have the same meaning as provided in § 47-2002.05(a)(1)(A).

(c)(1) No more than 2 licensees may be transferred to any one ward pursuant to subsection (b) of this section.

(2) Licensees transferring to a C-4 zone shall not count against the ward limitations set forth in paragraph (1) of this subsection.

(d) Notwithstanding any other provision, licensees relocating pursuant to subsection (b) of this section shall not locate within 1,200 feet from each other.

(e) No portion of any establishment granted a license pursuant to subsection (b) of this section shall be located within 600 feet of a church, school, library, playground, or the area under the jurisdiction of the Commission of Fine Arts pursuant to §§ 6-611.01 — 6-611.02.

(f) All licensees shall consult the Advisory Neighborhood Commission in the area where the license is transferred pursuant to subsection (b) of this section regarding entering a settlement agreement with the community.

(g) Notwithstanding any other provision of this section, a license under subsection (b) of this section shall not be transferred prior to November 1, 2007, or to a location that has been rezoned by that date to a residential, C-1, or C-2 zoning district classification as identified in the Zoning Regulations of the District of Columbia.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 18, 2007, D.C. Law 17-24, § 2, 54 DCR 8011; May 1, 2013, D.C. Law 19-310, § 2(l), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (a-1); and substituted "settlement agreement" for "voluntary agreement" in (f).

Temporary Amendment of Section. — Section 2 of D.C. Law 19-129 added subsec. (a-1) to read as follows:

"(a-1) Notwithstanding subsection (a) of this section, no class CN license with nude dancing shall be issued in or transferred into Ward 5, as defined by § 1-1041.03; provided, that this section shall not prohibit the transfer of an existing CN license with nude dancing within Ward 5.".

Section 4(b) of D.C. Law 19-129 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation.

For temporary addition of (a-1) and amendment of (f), see § 2(l) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(l) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 4. APPLICATION AND REVIEW PROCESSES.

Subchapter I. Application Requirements.

§ 25-402. New license application for manufacturer, wholesaler, or retailer.

(a) The application of a person applying for a manufacturer's, wholesaler's, or retailer's license shall include:

(1) In the case of an individual applicant, the trade name of the business, if applicable, and the name and address of the individual; in the case of a partnership or limited liability company applicant, the trade name of the business, if applicable, and the names and addresses of each member of the partnership or limited liability company; and in the case of a corporate applicant, the legal name, trade name, place of incorporation, principal place of business, and the names and addresses of each of the corporation's principal officers, directors, and shareholders holding, directly or beneficially, 10% or more of its common stock;

(2) The name and address of the owner of the establishment for which the license is sought and the premises where it is located; provided, that this requirement shall not apply to applicants for a solicitor's license;

(3) The class of license sought;

(4) The proximity of the establishment to the nearest public or private, elementary, middle, charter, junior high, or high school, and the name of the school;

(5) The size and design of the establishment, which shall include both the

number of seats (occupants) and the number of patrons permitted to be standing, both inside and on any sidewalk café or summer garden.

(6) A detailed description of the nature of the proposed operation, including the following:

(A) The type of food to be offered, if any;

(B) The type of entertainment to be offered, if any;

(C) The goods and services to be offered for sale, in addition to alcoholic beverages, if any;

(D) The hours during which the establishment plans to sell alcoholic beverages;

(E) If different from those stated in subparagraph (D) of this paragraph, the hours during which the establishment plans to remain open for the sale of goods or services other than alcoholic beverages and a description of the provisions planned for the storage of the alcoholic beverages, as required under § 25-754, during hours when the sale of alcoholic beverages is prohibited;

(7) An affidavit that complies with § 47-2863(b);

(8) Documents or other written statements or evidence establishing to the satisfaction of the Board that the person applying for the license meets all of the qualifications set forth in § 25-301; and

(9) Written statements or evidence establishing to the satisfaction of the Board that the applicant has complied with the requirements of § 25-423.

(b) The applicant for a restaurant or hotel license shall attest that it will receive at least 45% of its gross annual receipts from the sale of food during each year of the license period.

(c) The Board shall establish application procedures for the issuance of a caterer's license under § 25-211(b).

(d)(1) The applicant for a nightclub license shall file a written security plan with the Board.

(2) The Board may require, in its sound discretion, the applicant for a restaurant, tavern, or multipurpose facility license to file a written security plan with the Board.

(3) A written security plan filed pursuant to this subsection shall include at least the following elements:

(A) A statement on the type of security training provided for, and completed by, establishment personnel, including:

(i) Conflict resolution training;

(ii) Procedures for handling violent incidents, other emergencies, and calling the Metropolitan Police Department; and

(iii) Procedures for crowd control and preventing overcrowding;

(B) The establishment's procedures for permitting patrons to enter;

(C) A description of how security personnel are stationed inside and in front of the establishment and the number and location of cameras used by the establishment;

(D) Procedures in place to prevent patrons from becoming intoxicated and ensuring that only persons 21 years or older are served alcohol;

(E) A description of how the establishment maintains an incident log;

(F) The establishment's procedures for preserving a crime scene; and

(G) In the event that cameras are required to be installed by the Board or in accordance with the establishment's security plan, the establishment shall ensure the following:

(i) The cameras utilized by the establishment are operational;

(ii) Any footage of a crime of violence or a crime involving a gun is maintained for a minimum of 30 days; and

(iii) The security footage is made available within 48 hours upon the request of ABRA or the Metropolitan Police Department.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 2, 2007, D.C. Law 16-192, § 1012(b), 53 DCR 6899; July 18, 2008, D.C. Law 17-201, § 4(b), 55 DCR 6289; Mar. 25, 2009, D.C. Law 17-353,§ 242, 56 DCR 1117; May 1, 2013, D.C. Law 19-310, § 2(m), 60 DCR 3410.)

Section references. — This section is referenced in § 25-404 and § 25-433.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 redesignated former (d), (e), and (f) as (d)(1), (d)(2), and (d)(3), respectively; and rewrote (d)(3).

Emergency legislation.

For temporary amendment of (d) through (f), see § 2(m) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(m) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-403. License renewal application for manufacturer, wholesaler, or retailer.

(a) An applicant for license renewal shall verify, by affidavit, the accuracy of its application, including all documents and submissions constituting a part of the application for its initial license or, if appropriate, at the time of a Board-approved substantial change in operation.

(b) In the case of an application for renewal of a restaurant or hotel license, the applicant shall present evidence establishing that the sale of food accounted for at least 45% of gross annual receipts from the operation of the restaurant or of the dining room of the hotel during the current license period.

(c) The applicant shall submit documents or other written evidence establishing to the satisfaction of the Board that the applicant has complied with the requirements of § 25-423.

(d) The Board shall establish application procedures for the renewal of a caterer's license under § 25-211(b).

(e)(1) In the case of an application for renewal of a nightclub license, the applicant shall submit a written security plan.

(2) In the case of an application for renewal for a restaurant, tavern, or multipurpose facility license, the Board may, in its sound discretion, require that the applicant submit a written security plan.

(3) A written security plan filed pursuant to this subsection shall include at least the following elements:

(A) A statement on the type of security training provided for, and completed by, establishment personnel, including:

(i) Conflict resolution training;

(ii) Procedures for handling violent incidents, other emergencies, and calling the Metropolitan Police Department; and

(iii) Procedures for crowd control and preventing overcrowding;

(B) The establishment's procedures for permitting patrons to enter;

(C) A description of how security personnel are stationed inside and in front of the establishment and the number and location of cameras used by the establishment;

(D) Procedures in place to prevent patrons from becoming intoxicated and ensuring that only persons 21 years or older are served alcohol;

(E) A description of how the establishment maintains an incident log;

(F) The establishment's procedures for preserving a crime scene; and

(G) In the event that cameras are required to be installed by the Board or in accordance with the establishment's security plan, the establishment shall ensure the following:

(i) The cameras utilized by the establishment are operational;

(ii) Any footage of a crime of violence or a crime involving a gun is maintained for a minimum of 30 days; and

(iii) The security footage is made available within 48 hours upon the request of ABRA or the Metropolitan Police Department.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; July 18, 2008, D.C. Law 17-201, § 4(c), 55 DCR 6289; May 1, 2013, D.C. Law 19-310, § 2(n), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 redesignated (e), (f), and (g) as (e)(1), (e)(2), and (e)(3), respectively; and rewrote (e)(3).

Emergency legislation. — For temporary amendment of (e), (f) and (g), see § 2(n) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this

section, see § 2(n) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter II. Notice of Application Proceedings.

§ 25-421. Notice by Board.

(a) Upon the receipt of an application for the issuance or renewal, for a substantial change in operation as determined by the Board under 25-404, or for the transfer of a license to a new location, of a retailer's license, the Board shall give notice of the application to the following parties:

(1) The Council;

(2) Repealed;

(3) Repealed;

(4) Any ANC within 600 feet of where the establishment is or will be located; and

(5) A citizens association meeting the requirements of § 25-601(3); provided, that the citizens association has, at least 30 days before the Board's receipt of the application, registered with ABRA by providing a copy of its charter, and an e-mail or other electronic address in a form consistent with ABRA's procedures.

(b) The notice shall contain the legal name and trade name of the applicant, the street address of the establishment for which the license is sought, the class of license sought, and a description of the nature of the operation the applicant has proposed or the proposed change in operation. The description shall include the hours of sales or service of alcoholic beverages.

(c) The notice to the Board of Education shall state the proximity of the establishment to the nearest public school of the District and the name of the nearest public school.

(d) The notice shall state that persons objecting to approval of the application are entitled to be heard before the granting of the license, and shall inform the recipient of the final day of the protest period and the date, time, and place of the administrative review in accordance with subchapter III of this chapter.

(e) The Board shall give notice to the ANC by first-class mail, postmarked not more than 7 days after the date of submission, and addressed to the following persons:

(1) The ANC office, with a copy for each ANC member;

(2) The ANC chairperson, at his or her home address of record; and

(3) The ANC member in whose single-member district the establishment is or will be located, at his or her home address of record.

(f) The Board shall publish the notices required under this section in the District of Columbia Register.

(g) Within 180 days after May 3, 2001, the Board shall implement a procedure by which it will provide additional notification, via electronic media, to the public and ANCs, of these notification requirements, and the publication of proposed and adopted regulations.

(h) The requirements of this section shall not apply to applicants for a caterer's license.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, §§ 101(s), 201(e), 51 DCR 6525; May 1, 2013, D.C. Law 19-310, § 2(o), 60 DCR 3410.)

Section references. — This section is referenced in § 25-353, § 25-423, and § 25-446.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (a)(5); and made a related change.

Emergency legislation. — For temporary addition of (a)(5), see § 2(o) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(o) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter III. Review of License Applications.

§ 25-432. Standard review procedures.

(a) If no protest has been received by the Board during the protest period, the Board shall schedule an administrative review to consider the application within 10 days after the end of the protest period.

(b) If a protest has been received by the Board during the protest period, the Board shall take the following actions:

(1) The Board shall schedule a protest hearing, to be held within 75 days of the end of the protest period, for new license applications to receive testimony and other evidence regarding the application in accordance with §§ 25-442 and 25-444.

(2)(A) The parties shall be informed of their obligation to attend a settlement conference under § 25-445 for the purpose of discussing and resolving, if possible, the objections raised by the protestants.

(B) The parties shall be informed of their rights and responsibilities with respect to reaching a settlement under §§ 25-445 and 25-446.

(C) At the request of all parties, and if a settlement conference would be unlikely to succeed, the Board may waive the parties' obligation to attend a settlement conference.

(3) The Board shall issue a decision in accordance with § 25-433.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(p), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 inserted "to be held within 75 days of the end of the protest period, for new license applications" in (b)(1).

Emergency legislation. — For temporary amendment of (b)(1), see § 2(p) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(p) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-433. Decisions of the board; petition for reconsideration.

(a) No application shall be approved until the Board has determined that the applicant has complied with § 25-402(a)(8) through (10) [now (7) through (9)] (and § 25-402(b) if the applicant is a restaurant or hotel) or, in the case of a renewal, has fulfilled the license requirements of this title. The Board shall make findings of fact with respect to each requirement, including the appropriateness standards set forth in §§ 25-313, 25-314, and 25-315, and the food sales requirements for restaurants and hotels.

(b) For the purposes of this section, the record shall close when a hearing is concluded. Parties shall have 30 days after the conclusion of the hearing to submit proposed findings of fact and conclusions of law to the Board.

(c) Within 90 days after the close of the record, the Board shall issue its written decision accompanied by findings of fact and conclusions of law. For new license applications, the Board shall issue its written decisions accompanied by findings of fact and conclusions of law within 60 days after the close of the record. The Board shall publish and maintain a compilation of its decisions and orders.

(d)(1) A petition for reconsideration, rehearing, reargument, or stay of a decision or order of the Board may be filed by a party within 10 days after the date of receipt of the Board's final order.

(2) The filing or the granting of a petition filed under paragraph (1) of this subsection shall not stay the final order unless the stay is specifically ordered by the Board.

(3) A stay shall be granted only upon good cause, which shall consist of unusual or exceptional circumstances.

(e) The Board may establish procedures under § 25-211(b) to consider an application which is not protested during the protest period.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR

2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 1, 2002, D.C. Law 14-190, § 1702(i), 49 DCR 6968; May 1, 2013, D.C. Law 19-310, § 2(q), 60 DCR 3410.)

Section references. — This section is referenced in § 25-432.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added the second sentence in (c).

Emergency legislation.

For temporary amendment of (c), see § 2(q) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(q) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-434. Influencing the application process.

(a) A person shall not provide, offer to provide, request, or receive anything of value for the personal use, enjoyment, or profit of an individual in exchange for the individual's promise not to exercise his or her rights provided under this title to object to, or petition against, a license application.

(b) Any person who violates subsection (a) of this section shall be guilty of a criminal misdemeanor, and, upon conviction, shall be imprisoned for not more than 90 days, or fined not more than the amount set forth in [§ 22-3571.01], or both.

(Jan. 24, 1934, ch. 4, § 14a, as added Oct. 3, 1992, D.C. Law 9-174, § 2(d), 39 DCR 5859; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 284(a), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $300" in (b).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 284(a) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IV. Review and Resolution Procedures.

§ 25-446. Settlement agreements; approval process; penalties for violations.

(a) The applicant and any protestant may, at any time, negotiate a settlement and enter into a written settlement agreement setting forth the terms of the settlement.

(b)(1) The signatories to the agreement shall submit the agreement to the Board for approval.

(2) Except as provided in § 25-446.02, all provisions of a settlement agreement approved by the Board shall be enforceable by ABRA or the Board.

(3) A settlement agreement not approved by the Board shall not be enforced by ABRA or the Board.

(c) If it determines that the settlement agreement complies with all applicable laws and regulations and the applicant otherwise qualifies for licensure, the Board shall approve the license application, conditioned upon the licensee's compliance with the terms of the settlement agreement. The Board shall incorporate the text of the settlement agreement in its order and the settlement agreement shall be enforceable by the Board.

(d)(1) Unless a shorter term is agreed upon by the parties, a settlement agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board.

(2) The Board may accept an application to amend or terminate a settlement agreement by fewer than all parties in the following circumstances:

(A) During the license's renewal period; and

(B) After 4 years from the date of the Board's decision initially approving the settlement agreement.

(3) Notice of an application to amend or terminate a settlement agreement shall be given both to the parties of the agreement and to the public at the time of the applicant's renewal application according to the renewal procedures required under §§ 25-421 through 25-423.

(4) The Board may approve a request by fewer than all parties to amend or terminate a settlement agreement for good cause shown if it makes each of the following findings based upon sworn evidence:

(A)(i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the settlement agreement; or

(ii) If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement;

(B) The need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant's establishment is located; and

(C) The amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.

(5) To fulfill the good faith attempt criteria of paragraph (4)(A)(ii) of this subsection, a sworn affidavit from the applicant shall be filed with the Board at the time that an application to amend a settlement agreement by fewer than all parties is filed stating that either:

(A) A meeting occurred between the parties which did not result in agreement; or

(B) The non-applicant parties refused to meet with the applicant.

(e) Upon a determination that a licensee has violated a settlement agree-

ment, the Board shall penalize the licensee according to the provisions set forth for violations of a license in Chapter 8 of this title.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, § 101(t), 51 DCR 6525; May 1, 2013, D.C. Law 19-310, § 2(r), 60 DCR 3410.)

Section references. — This section is referenced in § 25-432 and § 25-722.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 rewrote the section heading, which read: "Voluntary agreements; approval process, show cause hearing for violation"; substituted "settlement agreement" for "voluntary agreement" throughout the section; redesignated (b) as (b)(1) and added (b)(2) and (b)(3); and rewrote (e), which read: "The Board shall initiate a show cause hearing upon evidence that a licensee has violated a voluntary agreement. Upon a determination that the licensee has violated the voluntary agreement, the Board shall penalize the licensee according to the provisions set forth for violations of a license in Chapter 8."

Emergency legislation. — For temporary amendment of section, see § 2(r) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary addition of a section designated as § 25-446.01, concerning enforceable provisions in settlement agreements, see § 2(s) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary addition of a section designated as § 25-446.02, concerning unenforceable provisions in settlement agreements, see § 2(s) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(r) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-446.01. Settlement agreements — enforceable provisions.

A settlement agreement enforceable by the Board under this subchapter may include:

(1) Provisions allowing or prohibiting entertainment and the hours that entertainment would be allowed;

(2) Specific methods to mitigate the level of noise outside the establishment, including:

(A) Sound attenuation elements;

(B) Requiring that the doors and windows of the establishment remain closed (except for ingress and egress) during hours of entertainment;

(C) Restricting indoor entertainment to a specific area of the establishment; and

(D)(i) Specification of physical attributes to mitigate noise emanating from an outdoor facility.

(ii) For the purposes of this subparagraph, the term "physical attributes" may include architectural features, sound barriers, and placement of speakers;

(3) Descriptions of reasonable efforts that the applicant or existing licensee will take to control litter and other debris in the immediate area surrounding the establishment, including:

(A) The frequency that the applicant or existing licensee will monitor the area;

(B) The days and time that the applicant or existing licensee will remove trash; and

(C) The efforts to be made by the licensee to limit rat and vermin infestation;

(4) Descriptions of parking arrangements, including the use of valet service contingent on proper permitting by the District Department of Transportation;

(5) Requirements that the applicant or existing licensee maintain an incident log and that the incident log be made available to ABRA and the Board, upon request;

(6) A notice to cure provision;

(7) Restrictions on hours of operation and sales and service for a new or existing licensee's facilities;

(8) Descriptions of how the licensee will address specific issues in determining the hours of operation, including:

(A) The licensee's history of previous violations;

(B) The proximity of the establishment to residences; and

(C) The hours of operation and sales and service of alcohol for other existing licensed establishments in the area;

(9) Restrictions on the utilization of floors, occupancy, and the number of seats for existing licensees and address specific issues in determining occupancy issues, including:

(A) The licensee's history of previous violations;

(B) The proximity of the establishment to residences; and

(C) The hours of operation and sales and service of alcohol for other existing licensed establishments in the area; and

(10) Stipulations that the establishment will comply with existing District statutes and regulations, or will comply with privileges granted by ABRA or any other District agency.

(May 1, 2013, D.C. Law 19-310, § 2(s), 60 DCR 3410.)

Emergency legislation. — For temporary (90 days) addition of this section, see § 2(s) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Retroactive application.

The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

§ 25-446.02. Settlement agreements — unenforceable provisions.

The Board shall not enforce the following provisions if included in a settlement agreement covered by this subchapter:

(1) Restraints on the ability of an applicant or existing licensee to operate its business, including:

(A) Requirements that the ANC or other community members approve future ownership changes;

(B) Requirements that the ANC or other community members be notified of intent to transfer ownership;

(C) Prohibitions against the applicant or existing licensee applying for a change in license class;

(D) A requirement that the applicant or existing licensee change the license class before selling the license;

(E) Requirements that prohibit the licensee from applying for changes to licensed operation procedures, including applications for summer gardens, sidewalk cafes, rooftop decks, entertainment endorsements, and changes of hours:

(F) Mandates regarding specific brands of alcohol or pricing for alcohol;

(G) Restrictions on the age of patrons; and

(H) Requirements that the applicant or existing licensee use a specific company for services;

(2) Statements that create administrative procedures in addition to those required by ABRA or any other District agency;

(3) A requirement that the applicant or existing licensee attend ANC meetings or other community meetings;

(4) Statements or requirements that the applicant or existing licensee:

(A) Provide money, special considerations, or other financial benefits to the community;

(B) Join any group; or

(C) Hire local individuals; and

(5) Any requirement that contracts, incident logs, or similar documents, be made available to the ANC or other community groups or members.

(May 1, 2013, D.C. Law 19-310, § 2(s), 60 DCR 3410.)

Section references. — This section is referenced in § 25-446.

Emergency legislation. — For temporary (90 days) addition of this section, see § 2(s) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Retroactive application.

The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

Chapter 5. Annual Fees.

Sec.
25-501. Annual fees.

§ 25-501. Annual fees.

(a) License fees shall be paid annually. The fee for the first year shall be paid

at the time of application and the renewal fee shall be paid on or before the anniversary date of issuance of the license.

(b) The applicant shall pay the initial license fee to the D.C. Treasurer. The applicant's duplicate receipt shall accompany the application for license. If the application for the license is denied, the fee shall be returned. This subsection shall not apply to an application for a temporary license.

(c) A licensee's failure to timely remit the annual fee shall be cause for the Board to suspend the license until the licensee pays the fee and any fines imposed by the Board for late payment. If a licensee is 90 days delinquent on payment of the renewal fee, the Board shall give notice to the licensee of its intent to revoke the license. The licensee shall have 14 days to respond to the notice. If the Board thereafter determines that the failure to pay the fees and fines is not for good cause, the Board shall revoke the license.

(d) The Board may establish license periods at intervals necessary to facilitate efficient processing of applications. If the Board changes a license period, the licensee shall pay the proportionate amount of the annual license fee. If the Board issues a license for less than one year, the licensee shall pay a fee reduced by the proportionate amount of the annual fee.

(e) The fee for a temporary license shall be assessed according to the number of days for which the license is issued and shall be paid at the time of the application.

(f) The minimum fee for a stipulated license issued by the Board pursuant to section 200 of Title 23 of the District of Columbia Municipal Regulations (23 DCMR § 200) shall be $100.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(t), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 added (f).

Emergency legislation. — For temporary addition of (f), see § 2(t) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(t) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 6. PROTESTS, REFERENDUM, AND COMPLAINTS.

§ 25-601. Standing to file protest against a license.

The following persons may protest the issuance or renewal of a license, the approval of a substantial change in the nature of operation as determined by the Board under § 25-404, or the transfer of a license to a new location:

(1) An abutting property owner;

(2) A group of no fewer than 5 residents or property owners of the District sharing common grounds for their protest; provided, that in a moratorium zone established under § 25-351 (or in existence as of May 3, 2001), a group of no fewer than 3 residents or property owners of the District sharing common grounds for their protest;

(3) A citizens association incorporated under the laws of the District of Columbia located within the affected area; provided, that the following conditions are met:

(A) Membership in the citizens association is open to all residents of the area represented by the association; and

(B) A resolution concerning the license application has been duly approved in accordance with the association's articles of incorporation or bylaws at a duly called meeting, with notice of the meeting given to the voting body and the applicant at least 7 days before the date of the meeting;

(4) An affected ANC;

(5) In the case of property owned by the District within a 600-foot radius of the establishment to be licensed, the Mayor;

(6) In the case of property owned by the United States within a 600-foot radius of the establishment to be licensed, the designated custodian of the property; or

(7) The Metropolitan Police Department District Commander, or his or her designee, in whose Police District the establishment resides.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 26, 2001, D.C. Law 14-42, § 6(d), 48 DCR 7612; Sept. 30, 2004, D.C. Law 15-187, § 101(x), 51 DCR 6525; Mar. 2, 2007, D.C. Law 16-191, § 47(a), 53 DCR 6794; May 1, 2013, D.C. Law 19-310, § 2(u), 60 DCR 3410.)

Section references. — This section is referenced in § 25-211, § 25-351, § 25-421, § 25-601.01, § 25-602, and § 25-609.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 deleted "a new owner license renewal" following "§ 25-404" in the introductory language; and substituted "meeting given to the voting body and the applicant at least 7 days before the date of the meeting" and a semicolon for "meeting being given at least 10 days before the date of the meeting" and a closing period in (3)(B).

Emergency legislation.

For temporary amendment of section, see § 2(u) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary addition of a section designated as § 25-601.01, concerning certain documents to be made available, see § 2(v) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(u) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Required number of persons.

Presence of a designated representative for the required number of protesting persons did not satisfy the Alcohol Beverage Control Board's implementing regulation because the purpose of the regulation was to enable the Board to determine that a sufficient number of persons existed to gain standing. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

§ 25-601.01. Certain documents to be made available.

An ANC, or citizens association meeting the requirements of § 25-601(3), may request from ABRA or the Board a copy of a contract to which a licensee is a party, an incident log kept by a licensee, or similar document, if obtained by ABRA or the Board pursuant to this title.

(May 1, 2013, D.C. Law 19-310, § 2(v), 60 DCR 3410.)

Emergency legislation. — For temporary (90 days) addition of this section, see § 2(v) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Retroactive application.

The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

§ 25-609. ANC comments.

(a) The affected ANC shall notify the Board in writing of its recommendations, if any, and serve a copy upon the applicant or licensee not less than 7 calendar days before the date of the hearing. Whether the ANC participates as a protestant, the Board shall give great weight to the ANC recommendations as required by subchapter V of Chapter 3 of Title 1. The applicant or licensee shall have the opportunity to respond to the ANC recommendations in a manner to be prescribed in the rules adopted by the Board.

(b) In the event that an affected ANC submits a settlement agreement to the Board on a protested license application, the Board, upon its approval of the settlement agreement, shall dismiss any protest of a group of no fewer than 5 residents or property owners meeting the requirements of § 25-601(2). The Board shall not dismiss a protest filed by another affected ANC or by a citizens association meeting the requirements of § 25-601(3) upon the Board's approval of an ANC's settlement agreement submission.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(w), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 rewrote the section.

Emergency legislation. — For temporary amendment of section, see § 2(w) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(w) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

The Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-301) does not apply retroactively. Recio v. District of Columbia Alcoholic Bev. Control Bd., 75 A.3d 134, 2013 D.C. App. LEXIS 506 (2013).

Chapter 7. Standards of Operation.

Subchapter II. Posting of Signs.

§ 25-711. Posting and carrying of licenses.

(a) A person receiving a license to manufacture, sell, or permit the consumption of alcoholic beverages shall frame the license under glass and post it conspicuously in the licensed establishment. If a settlement agreement is a part of the license, the license shall be marked "settlement agreement on file" by the Board, and the licensee shall make a copy of the settlement agreement immediately accessible to any member of the public, official of ABRA, or officer of the Metropolitan Police Department upon request.

(b) The licensee under a retail license or a club license, shall post, in a conspicuous place on the front window or front door of the licensee's premises, the correct name or names of the licensee or licensees and the class and number of the license in plain and legible lettering not less than one inch nor more than 1.25 inches in height.

(c) A licensee under a temporary license shall have the license available for inspection by any member of the Board, employee of the Board, or member of the Metropolitan Police Department during the event for which the license was issued.

(d) A licensee under a solicitor's license shall, while soliciting orders, carry the license upon his or her person and shall exhibit the license, upon request, to any member of the Board, employee of the Board, or member of the Metropolitan Police Department.

(e) A licensee under a manager's license shall, while managing a licensed establishment, carry the license upon his or her person and shall exhibit the license, upon request, to any member of the Board, employee of the Board, or member of the Metropolitan Police Department.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(x), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted "settlement agreement" for "voluntary agreement" throughout (a).

Emergency legislation. — For temporary amendment of (a), see § 2(x) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(x) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter III. Hours; Noise Restrictions; Control of Litter.

§ 25-721. Hours of sale and delivery for wholesalers and manufacturers.

(a) A licensee under a wholesaler's license shall sell and deliver alcoholic beverages only between the hours of 6:00 a.m. and 1:00 a.m., Monday through Saturday; provided, that licensees may also make deliveries between 5:00 a.m. and 6:00 a.m., Monday through Saturday.

(b) In addition to the provisions of subsection (a) of this section, the licensee under a wholesaler's license, class A or B, may deliver alcoholic beverages to a license under a temporary license, class F or G, license between the hours of 9:00 a.m. and 9:00 p.m. on Sunday.

(c) A manufacturer's license, class A or B, may sell and deliver alcoholic beverages between the hours of 7:00 a.m. and midnight, Monday through Sunday.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Feb. 22, 2014, D.C. Law 20-81, § 2, 61 DCR 173.)

Effect of amendments. — The 2014 amendment by D.C. Law 20-81 deleted "a manufacturer's license or" preceding "a wholesaler's license" in (a); deleted "a manufacturer's license, class A or B, or" preceding "a wholesaler's license" in (b); and added (c).

Legislative history of Law 20-81. — Law 20-81, the "Manufacturers' Sunday Sale Act of 2013," was introduced in Council and assigned Bill No. 20-197. The Bill was adopted on first and second readings on November 5, 2013, and December 3, 2013, respectively. Signed by the Mayor on December 27, 2013, it was assigned Act No. 20-251 and transmitted to Congress for its review. D.C. Law 20-81 became effective on February 22, 2014.

§ 25-722. Hours of sale and delivery for off-premises retail licensees.

(a) A licensee under an off-premises retailer's license, class A or B, may sell and deliver alcoholic beverages only between the hours of 7:00 a.m. and midnight, Monday through Saturday, and during those same hours on December 24 and 31 of each year, subject to voluntary agreements [settlement agreements] pursuant to § 25-446.

(b) The Board may also permit a licensee under an off-premises retailer's license, class A or B, to sell or deliver alcoholic beverages between the hours of 7:00 a.m. and midnight on Sundays, subject to voluntary agreements [settlement agreements] pursuant to § 25-446.

(c) A licensee under a retailer's license, class B, which meets the require-

ments of § 25-303(c)(1) through (3), may also sell or deliver alcoholic beverages between the hours of 9:00 a.m. and 10:00 p.m. on Sundays and between the hours of 10:00 p.m. and midnight, Monday through Sunday, and on December 24 and December 31 of each year.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, § 101(z), 51 DCR 6525; Sept. 14, 2011, D.C. Law 19-21, § 8122, 58 DCR 6226; Sept. 20, 2012, D.C. Law 19-168, § 2052, 59 DCR 8025; May 1, 2013, D.C. Law 19-310, § 2(y), 60 DCR 3410.)

Section references. — This section is referenced in § 25-123.

Effect of amendments.

The 2012 amendment by D.C. Law 19-168 substituted "7:00 a.m." for "9:00 a.m." in (a) and (b); added "subject to voluntary agreements pursuant to § 25-446" in (a); and added "subject to the voluntary agreements pursuant to § 25-446" in (b).

The 2013 amendment by D.C. Law 19-310 substituted "class A or B" for "class B" in (b).

Emergency legislation.

For temporary amendment of (b), see § 2(y) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(y) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-168. — Law 19-168, the "Fiscal Year 2013 Budget Support Act of 2012," was introduced in Council and assigned Bill No. 19-743. The Bill was adopted on first and second readings on May 15, 2012, and June 5, 2012, respectively. Signed by the Mayor on June 22, 2012, it was assigned Act No. 19-385 and transmitted to Congress for its review. D.C. Law 19-168 became effective on September 20, 2012.

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-723. Hours of sale and service for on-premises retail licensees and temporary licensees.

(a) The licensee under a hotel license may make available in the room of a registered adult guest, and charge to the registered guest if consumed, miniatures as defined in § 25-101(32A) at all hours on any day of the week.

(b) Except as provided in § 25-724 and subsections (c), (d), and (e) of this section, the licensee under a [sic] on-premises retailer's license or a temporary license may sell or serve alcoholic beverages on any day and at any time except between the following hours:

(1) 2:00 a.m. and 8:00 a.m., Monday through Friday, excluding District and federal holidays; and

(2) 3:00 a.m. and 8:00 a.m. on Saturday and Sunday, excluding District and federal holidays.

(c)(1) Except as provided in § 25-724, the licensee under an on-premises retailer's license or a temporary license may sell or serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day during the following times:

(A) On a District or federal holiday;

(B) The Saturday and Sunday preceding Memorial Day and Labor Day, as set forth in § 1-612.02(a)); and

(C) The Saturday and Sunday adjacent to January 1 (New Year's Day) and July 4 (Independence Day); except, that if the holiday under this subparagraph occurs on a Tuesday, Wednesday, or Thursday, this subparagraph shall not apply.

(2) A licensee operating under an on-premises retailer's license shall not

be required to obtain Board approval to sell or serve alcoholic beverages and operate in accordance with paragraph (1) of this subsection.

(3) This subsection shall not apply during Inaugural Week, as defined in subsection (e) of this section.

(4) Once each calendar year and no fewer than 30 days before the first holiday on which a licensee seeks to extend its hours of operation pursuant to this subsection, the licensee shall provide written notification and a public safety plan to the Board and the Metropolitan Police Department of its intent to extend its hours of operation.

(d) [Expired].

(e)(1) Every 4 years, beginning in 2013, the week of January 15 through January 21, shall be designated "Inaugural Week." Except as provided in § 25-724, during Inaugural Week, a licensee under an on-premises retailer's license or a temporary license may sell or serve alcoholic beverages until 4 a.m. and operate 24 hours a day if the licensee:

(A) Provides written notification and a public safety plan, no later than January 7, to the Board and the Metropolitan Police Department of its hours of operation; and

(B) Pays the following fee for each day it will serve alcohol pursuant to this subsection:

(i) $250 for a CN licensee;

(ii) $100 for a CR or CT licensee; and

(iii) $50 for any other licensee.

(2) A licensee operating under an on-premises retailer's license shall not be required to obtain Board approval to sell or serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day during Inaugural Week.

(f)(1) During the beginning of daylight saving time under § 28-2711, on the 2nd Sunday of March of each year, a licensee under an on-premises retailer's license may sell and serve alcoholic beverages between 3:00 a.m. and 4:00 a.m.

(2) A licensee operating under an on-premises retailer's license shall not be required to obtain Board approval to sell or serve alcoholic beverages in accordance with paragraph (1) of this subsection.

(3) This subsection shall apply as of October 1, 2013.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 25, 2009, D.C. Law 17-361, § 2(c)(1), 56 DCR 1204; Sept. 14, 2011, D.C. Law 19-21, § 8142, 58 DCR 6226; Dec. 2, 2011, D.C. Law 19-45, § 2, 58 DCR 8937; Sept. 20, 2012, D.C. Law 19-168, § 2042(a), 59 DCR 8025; May 1, 2013, D.C. Law 19-310, § 2(z), 60 DCR 3410.)

Section references. — This section is referenced in § 25-725 and § 25-827.

Effect of amendments.

The 2012 amendment by D.C. Law 19-168 substituted "subsections (c), (d), and (e)" for "subsections (c) and (d)" in the introductory language of (b); substituted "Sunday, excluding" for "on" in (b)(2); deleted former (b)(3), which read: "3:00 a.m. and 8:00 a.m. on Sunday"; rewrote (c) and (d); added (e); and made related changes.

The 2013 amendment by D.C. Law 19-310 substituted "miniatures as defined in § 25-101(32A)" for "closed miniature containers of

alcoholic beverages" in (a); added (d)(4), which stated "This subsection shall expire on September 30, 2013"; and added (f).

Emergency legislation.

For temporary amendment of (a) and (d), and addition of (f), see § 2(z) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary amendment of (e)(1), see § 2 of the Inaugural Hours Emergency Act of 2012 (D.C. Act 19-614, January 14, 2013, 60 DCR 1298).

For temporary (90 days) amendment of this section, see § 2(z) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-168. — See note to § 25-722.

Legislative history of Law 19-310. — See note to § 25-101.

Editor's notes. — Section 2043 of D.C. Law 19-168 provided: "Reporting Requirement. Within one year of the effective date of this subtitle, the Mayor shall transmit to the Council a report on the extensions of hours of operation for licensees licensed to sell and serve alcoholic beverages set forth in D.C. Official Code § 25-723(c), (d), and (e), and the effect of the extensions on liquor store hours, as set forth in the Off-Premises Alcohol Act of 2012, passed on 2nd reading on June 5, 2012 (Enrolled version of Bill 19-743), which shall include:

"(1) The effect of the extensions on local communities;

"(2) An assessment from the Metropolitan Police Department on the number of reported incidents related to the extensions;

"(3) An estimate from the Office of the Chief Financial Officer on the revenue implications of the extensions."

Former subsection (d) of this section, concerning sales and service of alcoholic beverages on the second Sunday in March between 3:00 a.m. and 4:00 a.m., provided by its own terms that it would expire September 30, 2013.

§ 25-724. Board authorized to further restrict hours of operation.

At the time of initial application or renewal of any class of license, the Board may further limit the hours of sale and delivery for a particular applicant (1) based on the Board's findings of fact, conclusions of law, and order following a protest hearing, or (2) under the terms of a settlement agreement.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(aa), 60 DCR 3410.)

Section references. — This section is referenced in § 25-123 and § 25-723.

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted "settlement agreement" for "voluntary agreement".

Emergency legislation. — For temporary amendment of section, see § 2(aa) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(aa) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-725. Noise from licensed premises.

(a) The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any:

(1) Mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise;

(2) Bell, horn, gong, whistle, drum, or other noise-making article, instrument, or device; or

(3) Musical instrument.

(b) This section shall not apply to:

(1) Areas in the building which are not part of the licensed establishment;

(2) A building owned by the licensee which abuts the licensed establishment;

(3) Any premises other than the licensed establishment which are located within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in the zoning regulations for the District;

(4) Sounds, noises, or music occasioned by normal opening of entrance and exit doors for the purpose of ingress and egress; or

(5) Heating, ventilation, and air conditioning devices.

(c) The licensees under this subchapter shall comply with the noise level requirements set forth in Chapter 27 of Title 20 of the District of Columbia Municipal Regulations.

(d)(1) ABRA shall maintain a complaint program to receive noise complaints by phone, email, and fax. The complaint program shall be staffed by an ABRA employee until at least one hour after the end time for the legal sale of alcoholic beverages as set forth in § 25-723.

(2) ABRA shall keep records regarding noise complaints and record the following information at the time the complaint is made:

(A) The time and date of the complaint;

(B) The name and address of the establishment that is the subject of the complaint;

(C) The name and address of the complainant, if available;

(D) The nature of the noise complaint; and

(E) Whether the complaint was substantiated by ABRA.

(3) Upon receipt of a noise complaint, ABRA shall attempt to contact the establishment by phone or in person and inform the ABC manager on-duty that a noise complaint has been received and describe the nature of the complaint.

(4) ABRA shall notify the licensee of the complaint by e-mail, phone, or registered mail within 72 hours of receiving the complaint. ABRA shall notify the licensee of the results of any investigation that may result in a show cause hearing within 90 days as required by § 25-832.

(e) The windows and doors of an establishment from which noise can be heard shall remain open or closed, as they were at the time the complaint was made, in order for an ABRA investigator or Metropolitan Police Department officer to determine whether a violation of subsection (a) of this section exists. The ABRA investigator shall have the authority to direct that windows and doors be closed or opened.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(bb), 60 DCR 3410.)

Section references. — This section is referenced in § 25-123 and § 25-313.

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 added (b)(5), (d) and (e); and made related changes.

Emergency legislation. — For temporary amendment of (b), and addition of (d) and (e), see § 2(bb) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(bb) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Noise.

District of Columbia Alcoholic Beverage Control Board's conclusion that approving a night club's application would create more peace, order, and quiet problems than the neighborhood could handle was not speculative, but was derived rationally from the findings based on evidence that numerous complaints had been made with regard to individuals urinating, vomiting, defecating, littering, and engaging in sexual activity in the alley behind the building. Panutat v. D.C. Alcoholic Bev. Control Bd., 75 A.3d 269, 2013 D.C. App. LEXIS 617 (2013).

Subchapter VII. Physical Space and Advertising.

§ 25-763. Restrictions on use of signs.

Temporary legislation. — Section 6 of D.C. Law 19-181 amended (f) to read as follows:

"(f) In addition to the provisions of this section, signage shall be subject to section 1 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21), and any rules issued pursuant to that section."

Section 8 of D.C. Law 19-181 provided that any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

Section 9 of D.C. Law 19-181 provided that sections 3, 4, 5, 6, and 7 of the act shall apply upon the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act.

Section 11(b) of D.C. Law 19-181 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 6 of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

For temporary amendment of (f), see § 6 of the Sign Regulation Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-499, October 26, 2012, 59 DCR 12749), applicable after the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property, and with the condition that any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

Editor's notes. — Section 6 of D.C. Law 19-289 would have rewritten (f) to read as follows: "In addition to the provisions of this section, signage shall be subject to § 1-303.21, and any rules issued pursuant to that section."

Section 9 of D.C. Law 19-289 provided that any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

Applicability of D.C. Law 19-289, § 6: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

Subchapter VIII. Reporting; Importation.

§ 25-772. Unlawful importation of beverages.

(a) Only a licensee under a manufacturer's, wholesaler's, or common carrier's license, or retailer's license under a validly issued import permit shall transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District from outside the District any wines, spirits, or beer in a quantity in excess of one case at any one time.

(b) No public or common carrier shall transport or bring into the District

wine, spirits, or beer in a quantity in excess of one case per location in any one calendar month for delivery to any one person in the District other than the licensee under a manufacturer's, wholesaler's, or retailer's license.

(c) This section shall not apply to persons possessing old stocks who are moving into the District, to embassies or diplomatic representatives of foreign countries, to wines imported for religious or sacramental purposes, to wine, spirits, and beer to be delivered to the licensee under a manufacturer's, wholesaler's, or retailer's license, or to any persons wishing to have liquor chocolates delivered to their residence. The term "liquor chocolates" may include other types of candies that have small amounts of liquor contained in the candy.

(d) The penalty for violation of this section shall consist of (1) the forfeiture of the beverages transported, imported, brought, or shipped, or caused to be transported, imported, brought, or shipped in violation of this section, and (2) a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for not more than 6 months.

(e) In addition to other penalties provided in this section, any person who violates the provisions of this section shall be liable for any tax, penalties, and interest provided for in this title.

(Jan. 24, 1934, ch. 4, § 39; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 4; Dec. 26, 1967, 81 Stat. 728, Pub. L. 90-223, § 1; July 24, 1982, D.C. Law 4-131, § 302, 29 DCR 2418; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, § 101(cc), 51 DCR 6525; July 18, 2008, D.C. Law 17-201, § 5(d), 55 DCR 6289; June 11, 2013, D.C. Law 19-317, § 284(b), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "of not more than the amount set forth in [§ 22-3571.01]" for "of not more than $500" in (d).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 284(b) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IX. Minors and Intoxicated Persons.

§ 25-783. Production of valid identification document required; penalty.

(a) A licensee shall refuse to sell, serve, or deliver an alcoholic beverage to any person who, upon request of the licensee, fails to produce a valid identification document.

(b) A licensee or his agent or employee shall take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age. Any person who supplies a valid

identification document showing his or her age to be the legal drinking age shall be deemed to be of legal drinking age.

(c) Upon finding that a licensee has violated subsection (a) or (b) of this section in the preceding 2 years:

(1) Upon the first violation, the Board shall fine the licensee not less than $1,000, and not more than $2,000, and suspend the licensee for 5 consecutive days. The 5-day suspension may be stayed by the Board for one year if all employees who serve alcoholic beverages in the licensed establishment complete an alcohol training program within 3 months.

(2) Upon the second violation, the Board shall fine the licensee not less than $2,000, and not more than $4,000, and suspend the licensee for 10 consecutive days. The Board may stay up to 6 days of the 10-day suspension for one year if all employees who serve alcoholic beverages in the licensed establishment complete an alcohol training program within 3 months.

(3) Upon the third violation, the Board shall fine the licensee not less than $4,000, and not more than $10,000, and suspend the licensee for 15 consecutive days, or revoke the license. The Board may stay up to 5 days of the 15-day suspension for one year if all employees who serve alcoholic beverages in the licensed establishment complete an alcohol training program within 3 months.

(4) Upon the fourth violation, the Board may revoke the license.

(5) The Board may revoke the license of a licensed establishment that has 5 or more violations of this section within a 5-year period.

(d) The provisions of this section notwithstanding, no licensee shall discriminate on any basis prohibited by Unit A of Chapter 14 of Title 2.

(e) An affirmative defense to a violation of subsection (a) of this section shall be that the person was at the time of the violation 21 years of age or older.

(Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10; June 29, 1953, 67 Stat. 104, ch. 159, § 404(g); Sept. 29, 1982, D.C. Law 4-157, § 12, 29 DCR 3617; Sept. 26, 1984, D.C. Law 5-106, § 2, 31 DCR 3381; Feb. 24, 1987, D.C. Law 6-178, § 2(a), 33 DCR 7654; Mar. 7, 1987, D.C. Law 6-217, § 12, 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12,§ 2(c), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(i), 41 DCR 1658; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(cc), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 added (e).

Emergency legislation. — For temporary addition of (e), see § 2(cc) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(cc) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-785. Delivery, offer, or otherwise making available to persons under 21; penalties.

(a) A person who is not a licensee shall not, within the District, purchase an alcoholic beverage for the purpose of delivering the alcoholic beverage to a person who is under 21 years of age.

(b) A person who is a licensee shall not, within the District, offer, give, provide, or otherwise make available an alcoholic beverage to a person who is under 21 years of age, except if necessary to allow the person to perform lawful employment responsibilities that require the person to have temporary possession of alcoholic beverages.

(c) A person who violates any provision of this section shall:

(1) Upon conviction for the first offense, be fined not more then [than] $1,000, or imprisoned up to 180 days, or both;

(2) Upon conviction for the second offense committed within 2 years from the date of any such previous offense, be fined not more than $2,500, or imprisoned up to 180 days, or both;

(3) Upon conviction for the third or any subsequent offense committed within 2 years from the date of any such previous offense, be fined not more than $5,000, or imprisoned up to one year, or both.

(d) A person alleged to have violated this section may be issued a citation under § 23-1110(b)(1). The person shall not be eligible to forfeit collateral.

(e) The fines set forth in this section shall not be limited by [§ 22-3571.01].

(Jan. 24, 1934, ch. 4, § 30a, as added May 24, 1994, D.C. Law 10-122, § 2(k), 41 DCR 1658; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 113(c), 60 DCR 2064.)

Section references. — This section is referenced in § 7-403.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (e).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 113(c) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 25-772.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter X. Temporary Surrender of License — Safekeeping.

§ 25-791. Temporary surrender of license — Safekeeping.

(a) A license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping. The Board shall hold the license until the licensee resumes business at the licensed establishment or the license is transferred to a new owner. If the licensee has not initiated proceedings to resume operations or transfer the license within 60 days after suspension, the Board may deem this license abandoned after giving notice to the licensee. The licensee has 14 days to respond to the Board's notice to request continued safekeeping.

(b) The Board may extend the period of safekeeping beyond 60 days for reasonable cause, such as fire, flood, other natural disaster; rebuilding or reconstruction; or to complete the sale of the establishment.

(c) Licenses in safekeeping beyond 60 days, as extended by the Board, shall be reviewed by the Board every 6 months to ensure that the licensee is making reasonable progress on returning to operation.

(c-1)(1) Except as proved by paragraph (3) of this subsection, the Board shall assess licenses in safekeeping a fee of 25% of the annual license fee for every 6 months that the license remains in safekeeping. The initial 6-month fee shall be paid by the licensee at the time the license is placed in safekeeping. Each additional 6-month safekeeping fee shall be paid in advance by the licensee.

(2) After 4 consecutive 6-month periods of safekeeping, the safekeeping fee shall be 50% of the annual license fee for every 6 months that the license remains in safekeeping.

(3) The safekeeping fee required by this subsection shall not apply to a licensee serving a suspension.

(d) This section shall not relieve a licensee from the responsibility for renewing the license upon its expiration.

(e) If a licensee notifies the Board that the licensee has ceased to do business under the license or if the Board cancels the license under this section, the license shall be marked as "canceled."

(f) Licenses which are restored after being held in safekeeping for longer than 2 years shall be subject to the license renewal process set forth in Chapter 4.

(g) A license suspended by the Board under this title shall be stored at the Board.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 13, 2004, D.C. Law 15-105, § 104(a), 51 DCR 881; May 1, 2013, D.C. Law 19-310, § 2(dd), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (c-1).

Emergency legislation. — For temporary addition of (c-1), see § 2(dd) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(dd) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Renewal.

Citizen's appeal of an order granting an owner's request to renew a liquor license for its nude dancing club under D.C. Code § 25-791(f) was dismissed because the citizen lacked standing to challenge the renewal of the owner's license; the citizen's allegations were generalized grievances, and the citizen failed to allege any actual or imminent injuries. Padou v. D.C. Alcoholic Bev. Control Bd., 70 A.3d 208, 2013 D.C. App. LEXIS 151 (2013), appeal dismissed by 2013 D.C. App. LEXIS 244 (D.C. Mar. 5, 2013).

Chapter 8. Enforcement, Infractions, and Penalties.

Subchapter II. Revocation, Suspension, and Civil Penalties

Subchapter II. Revocation, Suspension, and Civil Penalties.

§ 25-823. Prompt notice of investigative reports.

The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if:

(1) The licensee violates any of the provisions of this title, the regulations promulgated under this title, or any other laws of the District, including the District's curfew law;

(2) The licensee allows the licensed establishment to be used for any unlawful or disorderly purpose;

(3) The licensee fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued;

(4) The licensee allows its employees or agents to engage in prostitution, as defined under § 22-2701.01(1) [now § 22-2701.01(3)], or engage in sexual acts or sexual contact, as defined under § 22-3001, at the licensed establishment;

(5) The licensee fails or refuses to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interferes with an investigation; or

(6) The licensee fails to follow its settlement agreement, security plan, or Board order.

(Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(a); Sept. 29, 1982, D.C. Law 4-157, §§ 9, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(5), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 11; 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(b), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(h), 41 DCR 1658; Apr. 30, 1998, D.C. Law 12-97, § 2, 45 DCR 1517; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 13, 2004, D.C. Law 15-105, § 4, 51 DCR 881; Sept. 30, 2004, D.C. Law 15-187, § 101(ee), 51 DCR 6525; July 18, 2008, D.C. Law 17-201, § 6(a), 55 DCR 6289; Mar. 25, 2009, D.C. Law 17-361, § 2(d)(2), 56 DCR 1204; May 1, 2013, D.C. Law 19-310, § 2(ee), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 substituted "settlement agreement" for "voluntary agreement" in (6).

Emergency legislation. — For temporary amendment of (6), see § 2(ee) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(ee) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

CASE NOTES

Sufficiency of evidence.

District of Columbia Alcoholic Beverage Control Board's (Board) order imposing a fine and suspending a liquor license was not supported by substantial evidence as standing alone, evidence of a single instance in which a member of the security staff became physical with a patron and another where the owner retained an employee who allegedly assaulted two patrons failed to establish the owner's adoption of a method of operation that encouraged, caused, or contributed to the disorderly conduct; the evidence could not sustain one D.C. Code § 25-823(2) violation, let alone the two found by the Board. 1900 M Rest. Ass'ns, Inc. v. D.C. Alcoholic Bev. Control Bd., 56 A.3d 486, 2012 D.C. App. LEXIS 591 (2012).

District of Columbia Alcoholic Beverage Control Board's order imposing a fine and suspending a liquor license was not supported by substantial evidence as the owner did not violate D.C. Code § 25-823(6) where although a security officer failed to summons a manager when two patrons failed to follow his commands and failed to eject a woman who was acting aggressively towards the two patrons, and another officer lacked familiarity with the security plan, there was not a pattern of operation that encouraged deviations from the club's security plan. 1900 M Rest. Ass'ns, Inc. v. D.C. Alcoholic Bev. Control Bd., 56 A.3d 486, 2012 D.C. App. LEXIS 591 (2012).

District of Columbia Alcoholic Beverage Control Board's order imposing a fine and suspending a liquor license was not supported by substantial evidence as the owner's mere failure to timely respond to an investigator did not amount to a failure or refusal to allow the investigator to examine the books and records in violation of D.C. Code § 25-823(5), especially as the owner could not retrieve the video footage because it no longer existed. 1900 M Rest. Ass'ns, Inc. v. D.C. Alcoholic Bev. Control Bd., 56 A.3d 486, 2012 D.C. App. LEXIS 591 (2012).

§ 25-826. Summary revocation or suspension.

(a) If the Board determines, after investigation, that the operations of a licensee present an imminent danger to the health and safety of the public, the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District.

(b) The Board, after investigation, may summarily revoke, suspend, fine, or restrict the license of a licensee whose establishment has been the scene of an assault on a police officer, government inspector or investigator, or other governmental official, who was acting in his or her official capacity, when such assault occurred by patrons who were within 1,000 feet of the establishment.

(c) A licensee may request a hearing within 72 hours after service of notice of the summary revocation, suspension, fine, or restriction of a license. The Board shall hold a hearing within 48 hours of receipt of a timely request and shall issue a decision within 72 hours after the hearing.

(d) A person aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2.

(Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(a); Sept. 29, 1982, D.C. Law 4-157, §§ 9, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(5), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 11; 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(b), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(h), 41 DCR 1658; Apr. 30, 1998, D.C. Law 12-97, § 2, 45 DCR 1517; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; July 18, 2008, D.C. Law 17-201, § 6(b), 55 DCR 6289; May 1, 2013, D.C. Law 19-310, § 2(ff), 60 DCR 3410.)

Section references. — This section is referenced in § 25-821 and § 25-827.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 inserted "after investigation" following "The Board" in (b).

Emergency legislation. — For temporary amendment of (b), see § 2(ff) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(ff) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-827. Request for suspension or revocation of license by Chief of Police.

(a) The Chief of Police may request the suspension or revocation of a license if the Chief of Police determines that there is a correlation between increased incidents of crime within 1,000 feet of the establishment and the operation of the establishment. The determination shall be based on objective criteria, including incident reports, arrests, and reported crime, occurring within the preceding 18 months and within 1,000 feet of the establishment.

(b) The Chief of Police may close an establishment for up to 96 hours, subject to a hearing and disposition by the Board under § 25-826 if he or she finds that:

(1) There is an additional imminent danger to the health and welfare of the public by not doing so; and

(2) There is no immediately available measure to ameliorate the finding in paragraph (1) of this subsection.

(c) The order of the Chief of Police to close an establishment under subsection (b) of this section shall terminate upon the disposition by the Board of the matter under § 25-826.

(d) The Chief of Police may, without a hearing, summarily revoke, suspend, or restrict a licensee's privilege to extended hours of operation under subsection § 25-723(c), (d), and (e) if the licensee's operation presents a demonstrated danger to the health, safety, or welfare of the public. A licensee may seek review of the summary revocation, suspension, or restriction pursuant to § 25-826(c) and (d).

(Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(a); Sept. 29, 1982, D.C. Law 4-157, §§ 9, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(5), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 11; 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(b), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(h), 41 DCR 1658; Apr. 30, 1998, D.C. Law 12-97, § 2, 45 DCR 1517; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 23, 2005, D.C. Law 16-20, § 2(b), 52 DCR 6575; Sept. 20, 2012, D.C. Law 19-168, § 2042(b), 59 DCR 8025.)

Section references. — This section is referenced in § 25-832.

Effect of amendments.

The 2012 amendment by D.C. Law 19-168 added (d).

Legislative history of Law 19-168. — Law 19-168, the "Fiscal Year 2013 Budget Support Act of 2012," was introduced in Council and assigned Bill No. 19-743. The Bill was adopted on first and second readings on May 15, 2012, and June 5, 2012, respectively. Signed by the Mayor on June 22, 2012, it was assigned Act

No. 19-385 and transmitted to Congress for its review. D.C. Law 19-168 became effective on September 20, 2012.

§ 25-830. Civil penalties.

(a) Within 90 days after May 3, 2001, the Board shall submit proposed regulations setting forth a schedule of civil penalties ("schedule") for violations of this title to the Council for a 60-day period of review, including Saturdays, Sundays, holidays, and periods of Council recess. If the Council does not approve, in whole or in part, the proposed regulations by resolution with the 60-day review period, the regulations shall be deem [deemed] disapproved. The schedule shall replace all civil penalties, except as expressly provided in this title.

(b) The schedule shall be prepared in accordance with the following provisions:

(1) The schedule shall contain 2 tiers that reflect the severity of the violation for which the penalty is imposed:

(A) The primary tier shall apply to more severe violations, including service to minors or violation of hours of sale or service of alcoholic beverages.

(B) The secondary tier shall apply to less severe violations, including the failure to post required signs.

(2) A subsequent violation in the same tier, whether a violation of the same provision or different one, shall be treated as a repeat violation for the purposes of imposing an increased penalty; provided, that all secondary tier infractions cited by ABRA investigators or Metropolitan Police Department Officers, during a single investigation or inspection on a single day, shall be deemed to be one secondary tier violation for the purposes of determining repeat violations under this section.

(c)(1) For primary tier violations, the penalties shall be no less than the following:

(A) For the first violation, no less than $1,000;

(B) For the second violation within 2 years, no less than $2,000; and

(C) For the third violation within 3 years, no less than $4,000;

(2) A licensee who has been found in violation of no more than 3 secondary tier violations and who is subsequently found in violation of a primary tier violation shall be penalized according to a first primary tier violation.

(3) A licensee found in violation of a primary tier offense for the 4th time within 4 years shall have the license either revoked or fined no less than $30,000 and suspended for 30 consecutive days.

(4) A licensee found in violation of a primary tier offense for the 5th time within 4 years shall have the license revoked.

(d)(1) For secondary tier violations, the penalties shall be no less than the following:

(A) For the first violation, no less than $250.

(B) For the second violation within 2 years, no less than $500.

(C) For the third violation within 3 years, no less than $750.

(2) A licensee found in violation of a secondary tier violation for the fourth time within 4 years shall be penalized according to a first primary tier

violation. Every subsequent secondary tier offense within 5 years of the first violation shall be fined according to the schedule for primary tier violations.

(e)(1) Except for an egregious violation as may be later defined by ABC rulemaking, no licensee shall be found to be in violation of a first-time violation of § 25-781 (sales to minors), unless the licensee has been given a written warning, or received a citation, for the violation, or had an enforcement proceeding before the Board, during the 4 years preceding the violation.

(2) A warning for a first-time violation of § 25-781 shall include a description of the violation. The Alcoholic Beverage Regulation Administration shall make available a schedule of fines that could be imposed upon subsequent violation. Within one year of [March 25, 2009], the Board shall submit a report on the status of the warning requirement for § 25-781 violations, including a statement on repeat offenders and subsequent fines or sanctions imposed. The provisions of paragraph (1) of this subsection, and the provisions of § 25-781(f) shall expire one year from [March 25, 2009], unless the Board finds each of the following:

(A) That the warning requirement was effective in correcting behavior that was the subject of the warning for those licensees; and

(B) That the warning requirement contributed to the overall prevention of sales to minors in the District of Columbia.

(3)(A) Within 60 days of [March 25, 2009], the Board shall issue proposed regulations for a comprehensive warning and violation structure, which shall include recommendations on which violations of the act or regulations shall require a warning for a first-time violation prior to penalty.

(B) Proposed rules under this subsection shall be submitted to the Council for a 30-day period of review. The Council may approve these proposed regulations, in whole or in part, by resolution. If the Council has not approved the regulations upon expiration of the 30-day review period, the regulations shall be deemed disapproved.

(f) The Board or the Council may amend the schedule. An amendment by the Board shall be submitted to the Council for its approval in accordance with subsection (a) of this section. The Board may fine for a violation not listed on the schedule consistent with the primary tier violation penalties set forth in subsection (c)(1) of this section.

(g) The schedule and any amendments to the schedule shall be published in the District of Columbia Register and promulgated by the procedure adopted under § 25-211(e).

(h) Penalties or fines assessed under this chapter shall be credited to the General Fund of the District of Columbia.

(i) It shall be a primary tier violation for a licensee to sell or serve alcohol on a suspended or expired license or a license held in safekeeping.

(j) It shall be a primary tier violation for a licensee to fail to comply with either of the statutory food requirements in § 25-113(b)(3)(B).

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 25, 2009, D.C. Law 17-361, § 2(d)(3), 56 DCR 1204; May 1, 2013, D.C. Law 19-310, § 2(gg), 60 DCR 3410.)

Section references. — This section is referenced in § 25-113, § 25-797, § 25-801, and § 25-823.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 rewrote (c)(3), which read "A licensee found in violation of a primary tier offense for the fourth time within 4 years shall have the license revoked"; added (c)(4); and added (i) and (j).

Emergency legislation. — For temporary amendment of (c), and addition of (i) and (j), see § 2(gg) of the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 (D.C. Act 19-597, January 14, 2013, 60 DCR 1001).

For temporary (90 days) amendment of this section, see § 2(gg) of the Omnibus Alcoholic Beverage Regulation Congressional Review Emergency Act of 2013 (D.C. Act 20-52, April 22, 2013, 60 DCR 6372, 20 DCSTAT 1388).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-831. Penalty for violation where no specific penalty provided; additional penalty for failure to perform certain required acts.

(a) A person who violates any of the provisions of this title, or regulations under this title, for which no specific penalty is provided shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than one year, or both.

(b) Any person required to file a return or report or perform any act under the provisions of this title who wilfully fails or refuses to file the return or report or perform the act within the time required shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 3 years, or both. The penalty provided herein shall be in addition to other penalties provided by this title.

(c) Violations of this section which are misdemeanors shall be prosecuted on information filed in the Superior Court of the District of Columbia by the Corporation Counsel. Violations of this subsection which are felonies shall be prosecuted by the United States Attorney for the District of Columbia.

(d) A civil fine may be imposed as an alternative sanction for any violation of this title for which no specific penalty is provided, or any rules or regulations issued under the authority of this title, under Chapter 18 of Title 2. Adjudication of an infraction of this chapter shall be under Chapter 18 of Title 2.

(Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); July 24, 1982, D.C. Law 4-131, § 301, 29 DCR 2418; Sept. 26, 1984, D.C. Law 5-106, § 3, 31 DCR 3381; Oct. 5, 1985, D.C. Law 6-42, § 455(b), 32 DCR 4450; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 284(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $1,000" in (a), and for "not more than $5,000" in (b).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 284(c) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively.

Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 25-832. Prompt notice of investigative reports.

(a) ABRA shall provide a licensee with either an investigative report or a public police incident report that may result in a show cause hearing as set forth in § 25-447 within 90 days of the date upon which the incident occurred.

(b) The requirement in subsection (a) of this section shall not apply where:

(1) Criminal action is being considered against the licensee or its employees; or

(2) Enforcement action is requested by the Chief of Police under § 25-827.

(Mar. 25, 2009, D.C. Law 17-361, § 2(d)(4), 56 DCR 1204; Sept. 26, 2012, D.C. Law 19-171, § 81(c), 59 DCR 6190.)

Section references. — This section is referenced in § 25-725.

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 added a colon at the end of the introductory language of (b).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 10. LIMITATIONS ON CONSUMERS.

§ 25-1001. Drinking of alcoholic beverage in public place prohibited; intoxication prohibited.

(a) Except as provided in subsections (b) and (c) of this section, no person in the District shall drink an alcoholic beverage or possess in an open container an alcoholic beverage in or upon any of the following places:

(1) A street, alley, park, sidewalk, or parking area;

(2) A vehicle in or upon any street, alley, park, or parking area;

(3) A premises not licensed under this title where food or nonalcoholic beverages are sold or entertainment is provided for compensation;

(4) Any place to which the public is invited and for which a license to sell alcoholic beverages has not been issued under this title;

(5) Any place to which the public is invited for which a license to sell alcoholic beverages has been issued under this title at a time when the sale of alcoholic beverages on the premises is prohibited by this title or by the regulations promulgated under this title; or

(6) Any place licensed under a club license at a time when the consumption of the alcoholic beverages on the premises is prohibited by this title or by regulations promulgated under this title.

(b) Subsection (a)(1) of this section shall not apply if drinking or possession of an alcoholic beverage occurs:

(1) In or on a structure which projects upon the parking, and which is an integral, structural part, of a private residence, such as a front porch, terrace, bay window, or vault; and

(2) By, or with the permission of, the owner or resident.

(c) No person, whether in or on public or private property, shall be intoxicated and endanger the safety of himself, herself, or any other person or property.

(d) Any person violating the provisions of subsection (a) or (c) of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 90 days, or both.

(e) Any person in the District who is intoxicated in public and who is not conducting himself or herself in such manner as to endanger the safety of himself, herself, or of any other person or of property shall be treated in accordance with Chapter 6 of Title 24.

(Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404(h); Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 2(a); Sept. 29, 1982, D.C. Law 4-157, § 13, 29 DCR 3617; Dec. 3, 1985, D.C. Law 6-64, § 2, 32 DCR 5970; Mar. 26, 1999, D.C. Law 12-206, § 2(b), 45 DCR 8430; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 284(d), 60 DCR 2064.)

Section references. — This section is referenced in § 24-604.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $500" in (d).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 25-1004. Prohibition on use of watercraft under certain conditions. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, §§ 2, 7, 44 DCR 1242; May 3, 2001, D.C. Law

13-298, § 101, 48 DCR 2959; Mar. 2, 2007, D.C. Law 16-195, § 3(a), 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Emergency legislation.

For temporary (90 day) repeal of section, see § 302 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary repeal of §§ 25-1004 through 25-1009, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C Act 19-508, October 26, 2012, 59 DCR 13325).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Act of 2013 (D.C. Act 20-3, January 29, 2013, 60 DCR 2762, 20 DCSTAT 410).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Second Congressional Review Emergency Act of 2013 (D.C. Act 20-51, April 17, 2013, 60 DCR 6344, 20 DCSTAT 1360).

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Editor's notes. — For present law, see § 50-1908 et seq.

§ 25-1005. Prohibition on use of watercraft under certain conditions — consent to testing. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, §§ 3, 7, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Emergency legislation.

For temporary (90 day) repeal of section, see § 302 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary repeal of section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C Act 19-508, October 26, 2012, 59 DCR 13325).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Act of 2013 (D.C. Act 20-3, January 29, 2013, 60 DCR 2762, 20 DCSTAT 410).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Second Congressional Review Emergency Act of 2013 (D.C. Act 20-51, April 17, 2013, 60 DCR 6344, 20 DCSTAT 1360).

Legislative history of Law 19-266. — See note to § 25-1004.

Editor's notes. — For present law, see § 50-1908 et seq.

§ 25-1006. Prohibition on use of watercraft under certain conditions — Preliminary testing; admissibility of test results. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, § 4, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Emergency legislation.

For temporary (90 day) repeal of section, see § 302 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary repeal of section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C Act 19-508, October 26, 2012, 59 DCR 13325).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Act of 2013 (D.C. Act 20-3, January 29, 2013, 60 DCR 2762, 20 DCSTAT 410).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Second Congressional Review Emergency Act of 2013 (D.C. Act 20-51, April 17, 2013, 60 DCR 6344, 20 DCSTAT 1360).

Legislative history of Law 19-266. — See note to § 25-1004.

Editor's notes. — For present law, see § 50-1908 et seq.

§ 25-1007. Prohibition on use of watercraft under certain conditions — Penalties. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, § 5, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Emergency legislation.

For temporary (90 day) repeal of section, see § 302 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary repeal of section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C Act 19-508, October 26, 2012, 59 DCR 13325).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Act of 2013 (D.C. Act 20-3, January 29, 2013, 60 DCR 2762, 20 DCSTAT 410).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Second Congressional Review Emergency Act of 2013 (D.C. Act 20-51, April 17, 2013, 60 DCR 6344, 20 DCSTAT 1360).

Legislative history of Law 19-266. — See note to § 25-1004.

Editor's notes. — For present law, see § 50-1908 et seq.

§ 25-1008. Prima facie evidence of intoxication. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, § 6, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 26, 2001, D.C. Law 14-42, § 6(h), 48 DCR 7612; Mar. 2, 2007, D.C. Law 16-195, § 3(b), 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Emergency legislation.

For temporary repeal of section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C Act 19-508, October 26, 2012, 59 DCR 13325).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Act of 2013 (D.C. Act 20-3, January 29, 2013, 60 DCR 2762, 20 DCSTAT 410).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Second Congressional Review Emergency Act of 2013 (D.C. Act 20-51, April 17, 2013, 60 DCR 6344, 20 DCSTAT 1360).

Legislative history of Law 19-266. — See note to § 25-1004.

Editor's notes. — For present law, see § 50-1908 et seq.

§ 25-1009. Operation of locomotive, streetcar, elevator, or horse-drawn vehicle by intoxicated person prohibited. [Repealed].

Repealed.

(Jan. 24, 1934, 48 Stat. 333, ch. 4, § 27; Oct. 5, 1985, D.C. Law 6-42, § 455(a), 32 DCR 4450; Apr. 9, 1997, D.C. Law 11-248, § 8(a), 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 26, 2001, D.C. Law 14-42, § 6(i), 48 DCR 7612; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Emergency legislation.

For temporary (90 day) repeal of section, see § 302 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary repeal of section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C Act 19-508, October 26, 2012, 59 DCR 13325).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Act of 2013 (D.C. Act 20-3, January 29, 2013, 60 DCR 2762, 20 DCSTAT 410).

For temporary (90 days) repeal of this section, see § 302 of the Comprehensive Impaired Driving and Alcohol Testing Program Second Congressional Review Emergency Act of 2013 (D.C. Act 20-51, April 17, 2013, 60 DCR 6344, 20 DCSTAT 1360).

Legislative history of Law 19-266. — See note to § 25-1004.

Editor's notes. — For present law, see §§ 50-1901, 50-2201.02, and 50-2206.01.

TITLE 26. BANKS AND OTHER FINANCIAL INSTITUTIONS.

Chapter 5B. Administration of the Banking Code.

Subchapter I. General Provisions.

§ 26-551.02. Definitions.

For the purposes of this chapter, the term:

(1) "Affiliate" means a financial institution holding company under federal law or a subsidiary or service corporation of a financial institution holding company.

(2) "Appropriate federal financial institutions agency" means the federal agency with statutory authority over the financial institution activities of a financial institution.

(3) "Bank" means an institution that engages in the business of banking, including a trust company, savings bank, savings and loan association, and credit union.

(4) "Bank holding company" shall have the same meaning as set forth in section 2(a) of the Bank Holding Company Act of 1956, approved May 9, 1956 (70 Stat. 133; 12 U.S.C. § 1841(a)).

(5) "Business of banking" means activities and transactions involving banking, including: (A) receiving deposits, paying checks, and lending money; (B) activities of a bank which are supervised by the Commissioner; and (C) activities incidental, necessary, or convenient to banking.

(6) "Capital" means capital deposits, surplus, and undivided earnings.

(7) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(7A) "Controlling interest" means:

(A) More than 50% of the total voting power of all classes of stock of a corporation or more than 50% of the total fair market value of all classes of stock of a corporation;

(B) More than 50% of the capital or profits in a partnership, association, or other unincorporated entity; or

(C) More than 50% of the beneficial interests in a trust.

(8) "Credit union" means a financial institution organized as a cooperative association with a limited membership and operating with insurance provided by the National Credit Union Administration.

(9) "Department" means the Department of Insurance, Securities, and Banking.

(10) "Director" means a director or trustee of an organization or a person with functions similar to the functions of a director or trustee.

(11) "District" means the District of Columbia.

(12) "District bank" means a bank chartered or organized under the District of Columbia Banking Code and under the authority and supervision of the Commissioner or a bank authorized to do business under the laws of the District.

(13) "District credit union" means a credit union chartered or organized under the District of Columbia Banking Code and under the authority and supervision of the Commissioner or a credit union authorized to do business under the laws of the District.

(14) "District of Columbia Banking Code" means the statutory provisions concerning banking and financial institutions which are codified in Title 26 of the District of Columbia Official Code, laws administered by the Commissioner, and rules and regulations promulgated under those statutory provisions and laws.

(15) "District savings institution" means a savings institution chartered or organized under the District of Columbia Banking Code and under the authority and supervision of the Commissioner or a savings institution authorized to do business under the laws of the District.

(16) "Executive officer" means a person who participates or has authority to participate, other than in the capacity of a director, in major policymaking functions of a financial institution, whether or not the person has an official title or receives compensation from the financial institution. The term "executive officer" shall not include a person who may exercise discretion in the performance of duties and functions, including discretion in the making of loans, if the person's exercise of discretion is limited by policy standards adopted by the board of directors of the financial institution and the person does not participate in major policymaking functions of the financial institution. The chair of the board, the president, chief executive officer, chief operating officer, chief financial officer, every executive vice president of a financial institution, and the senior trust officer of a trust company shall be presumed to be executive officers unless the person is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the person does not actually participate in major policymaking functions of the financial institution.

(17) "Federal agency" means an agency of the United States of America.

(18) "Financial institution" means a bank, savings institution, credit union, foreign bank, trust company, non-depository financial institution, or

any other person which is regulated, supervised, examined, or licensed by the Department of Insurance, Securities, and Banking; which has applied to be regulated, supervised, examined, or licensed by the Department of Insurance, Securities, and Banking; which is subject to the regulation, supervision, examination, or licensure by the Department of Insurance, Securities, and Banking; or which is engaged in an activity covered by the District of Columbia Banking Code.

(19) "Non-depository financial institution" means a financial institution that is engaged in a regulated activity and that is not a bank or credit union.

(20) "Order" means an approval, consent, authorization, exemption, denial, prohibition, requirement, or other administrative action.

(21) "Person" means an individual, corporation, trust, joint venture, company, association, firm, partnership, society, joint stock company, pool syndicate, sole proprietorship, unincorporated organization, fiduciary business, or any other similar entity.

(22) "Regulated activity" means an activity authorized and regulated under the District of Columbia Banking Code and under the authority and supervision of the Commissioner.

(23) "Savings institution" means a savings and loan association or savings bank.

(24) "Subsidiary" means a company in which a person owns at least a majority of the shares or equity interest or which the person controls.

(June 9, 2001, D.C. Law 13-308, § 102, 48 DCR 3244; June 11, 2004, D.C. Law 15-166, § 2(a), 51 DCR 2817; June 20, 2012, D.C. Law 19-143, § 201(a), 59 DCR 4069.)

Section references. — This section is referenced in § 26-131.02, § 26-431.02, § 26-631, § 26-831.02, § 26-1151.01, § 26-1401.02, and § 31-103.

Effect of amendments.

D.C. Law 19-143 added par. (7A).

Legislative history of Law 19-143. — Law 19-143, the "DISB Fingerprint-Based Background Check Authorization Act of 2012", was introduced in Council and assigned Bill No. 19-198, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on March 6, 2012, and April 17, 2012, respectively. Signed by the Mayor on April 29, 2012, it was assigned Act No. 19-346 and transmitted to both Houses of Congress for its review. D.C. Law 19-143 became effective on June 20, 2012.

Subchapter II. Abolishment of Department of Banking and Financial Institutions; Commissioner of the Department of Banking and Financial Institutions.

§ 26-551.05. General powers and responsibilities of the Commissioner.

(a) The Commissioner shall:

(1) Administer the District of Columbia Banking Code;

(2) Promote and maintain a climate and regulatory framework that will encourage financial institutions to organize to do business in the District and contribute to the economic development of the District through the increased availability of capital and credit;

(3) Expand advantageous financial services to the public in a nondiscriminatory manner;

(4) Charter, regulate, supervise, and examine banks, savings institutions, credit unions, trust companies, and other financial institutions engaged, or seeking to engage, in the business of banking in the District;

(5) License, regulate, supervise, and examine non-depository financial institutions engaged in regulated activity in the District;

(6) Regulate the opening or closing of branches, agencies, offices, or other facilities by financial institutions under the authority and supervision of the Commissioner;

(7) Approve or disapprove mergers or acquisitions involving District financial institutions or financial institution holding companies;

(8) Monitor community development commitments of financial institutions chartered, organized, or doing business in the District;

(9) Approve or disapprove changes in control of financial institutions chartered or organized in the District;

(10) Approve or disapprove conversions of federally-chartered institutions into District-chartered financial institutions;

(11) Promulgate regulations, rules, policy statements, interpretations, and opinions necessary or appropriate to carry out the purposes of the District of Columbia Banking Code;

(12) Assure that all financial institutions engaged in regulated activity in the District, under the supervision or control of the Commissioner, or seeking to do business into the District of Columbia under the District of Columbia Banking Code provide financial services to the public in a manner that fosters the development and revitalization of housing and commercial corridors in underserved neighborhoods in the District, help meet the credit and deposit service needs of lower income and minority residents of the District, and expand financial and technical support for small, minority, and women-owned businesses;

(13) Investigate possible violations of the District of Columbia Banking Code and take any authorized action upon finding a violation;

(14) Examine or audit a financial institution, bank holding company, affiliate, or subsidiary to assure that the financial institution bank holding company, affiliate, or subsidiary is operating in compliance with the law and in a manner that preserves safety and soundness;

(15) Request or pursue a restraining order, the appointment of a receiver or conservator, the involuntary dissolution of a corporation, or the freezing or seizure of assets of a person associated with a violation or possible violation of the District of Columbia Banking Code;

(16) In all respects permitted by law, act as the District government's regulatory authority for financial institutions operating in the District; and

(17) Recommend to the Mayor annually, or at any other time, any necessary changes to District laws dealing with banking or other areas within the jurisdiction of the Commissioner.

(b) The Commissioner shall be responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge

of all responsibilities vested by law in the Department or the Commissioner. The Commissioner shall have all powers necessary or convenient for the administration and enforcement of the District of Columbia Banking Code.

(b-1)(1) To determine a financial institution's eligibility to conduct a regulated activity under the District of Columbia Banking Code, the Commissioner may require each organizer, partner, director, officer, and owner with a controlling interest in the financial institution to submit to the Commissioner his or her fingerprints, contact information, and other identifying information, along with written consent to the performance of a criminal history record background check.

(2) The Commissioner may exchange the fingerprints and other information with, and receive criminal history record background information from, the Metropolitan Police Department and the Federal Bureau of Investigation for the purposes of facilitating the Commissioner's determination.

(3) The individual or financial institution associated with the regulated activity requiring the Commissioner's determination shall bear the cost of the criminal history record background check and all costs of administering and processing the background check.

(c) The Commissioner may promulgate rules and regulations necessary or appropriate to the execution of the Commissioner's powers, duties, and responsibilities.

(d) The Commissioner may enter into agreements that the Commissioner considers necessary or appropriate to the exercise of his or her powers, including agreements with agencies or instrumentalities of the District, states and territories of the United States of America, or the federal government, for the examination of banks, savings institutions, credit unions, trust companies, and other financial institutions.

(e) The Commissioner, in the performance of the duties and responsibilities of the Department, may enter into contracts with the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, District agencies, other state or federal banking agencies, or any other entity, for those services necessary to carry out the duties and responsibilities of the Commissioner and the Department.

(f) The Commission may establish and modify fees to implement the District of Columbia Banking Code.

(June 9, 2001, D.C. Law 13-308, § 105, 48 DCR 3244; Apr. 13, 2005, D.C. Law 15-354, § 35(b), 52 DCR 2638; June 20, 2012, D.C. Law 19-143, § 201(b), 59 DCR 4069.)

Section references. — This section is referenced in § 31-103.

Effect of amendments.

D.C. Law 19-143 added subsec. (b-1).

Legislative history of Law 19-143. — For history of Law 19-143, see notes under § 26-551.02.

Subchapter IV. Investigation, Examination, and Enforcement Powers of the Commissioner.

§ 26-551.20. Judicial review.

(a) Within 10 days after service of a temporary cease and desist order, a financial institution or other party named in the temporary cease and desist order may apply to the Superior Court of the District of Columbia for an injunction to set aside, limit, or suspend the order.

(b) A final order or a final cease and desist order issued under this chapter shall be reviewable by the Superior Court of the District of Columbia. The review of the final order or the final cease and desist order shall be confined to the record of the hearing conducted under § 26-551.13 and to a determination of whether the Commissioner's order was arbitrary or capricious.

(c) In addition to any temporary cease and desist order, final order. or final cease and desist order issued by the Commissioner pursuant to subsections (a) and (b) of this section, any final order of the Commissioner or final action of the Department shall be subject to review by the Superior Court of the District of Columbia, unless the final order or final agency action is appealable to the District of Columbia Court of Appeals pursuant to § 2-510.

(June 9, 2001, D.C. Law 13-308, § 120, 48 DCR 3244; Nov. 5, 2013, D.C. Law 20-40, § 3, 60 DCR 12304.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-40 added subsection (c).

Legislative history of Law 20-40. — Law 20-40, the "Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013", was introduced in Council and assigned Bill No. 20-268. The Bill was adopted on first and second readings on June 26, 2013 and July 10, 2013, respectively. Signed by the Mayor on Aug. 20, 2013, it was assigned Act No. 20-156 and transmitted to Congress for its review. D.C. Law 20-40 became effective on Nov. 5, 2013.

Editor's notes. — Applicability of D.C. Law 20-40: Section 8 of D.C. Law 20-40 provided that §§ 2 and 3 of the act shall apply as of November 7, 2011.

§ 26-1101. Definitions.

Section references. — This section is referenced in § 26-1151.01 and § 42-2701.02.

CASE NOTES

Applied in Logan v. Lasalle Bank Nat'l Ass'n, 80 A.3d 1014, 2013 D.C. App. LEXIS 793 (2013).

Chapter 11A. Home Loan Protection.

Subchapter II. Prohibited Practices.

§ 26-1152.13. Limitations on balloon payments.

CASE NOTES

Business loans.

Loan that was obtained for property that was rented out by promisor was not a "covered loan" under District of Columbia Home Loan Protection Act (HLPA), although loan contained a balloon payment, where note was a business loan secured by promisor's rental property. Onyeoziri v. Spivok, 44 A.3d 279, 2012 D.C. App. LEXIS 269 (2012).

Chapter 13. Trust, Loan, Mortgage, Safe Deposit and Title Corporations.

Subchapter I. General

Subchapter I. General.

§ 26-1309. Powers of companies; liability as trustee.

All companies organized under this chapter are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power:

(1) To make contracts;

(2) To sue and be sued, plead and be impleaded, in any court as fully as natural persons;

(3) To make and use a common seal and alter the same at pleasure;

(4) To loan money; and

(5) When organized under clause (1) of § 26-1301, to accept and execute trusts of any and every description which may be committed or transferred to them, and to accept the office and perform the duties of receiver, assignee, personal representative, special administrator, guardian of the estate of minors with the consent of the guardian of the person of such minor, and committee of the estates of people with mental illness or intellectual disabilities whenever any trusteeship or any such office or appointment is committed or transferred to them, with their consent, by any person, body politic or corporate, or by any court in the District of Columbia; and all such companies organized under clause (1) of § 26-1301 are further authorized to accept deposits of money for the purposes designated herein, upon such terms as may be agreed upon from time to time with depositors, and to act as agent for the purpose of issuing or countersigning the bonds or obligations of any corporation, association, municipality, or state, or other public authority, and to

receive and manage any sinking fund on any such terms as may be agreed upon, and shall have power to issue its debenture bonds upon deeds of trust or mortgages of real estate to a sum not exceeding the face value of said deeds of trust or mortgages, and which shall not exceed 50 percent of the fair cash value of the real estate covered by said deeds or mortgages, to be ascertained by the Superintendent of Banking and Financial Institutions [Commissioner of the Department of Insurance, Securities, and Banking]; but no debenture bonds shall be issued until the securities on which the same are based have been placed in the actual possession of the trustee named in the debenture bonds, who shall hold said securities until all of said bonds are paid; and when organized under clause (2) of § 26-1301 said company is authorized to insure titles to real estate and to transact generally the business mentioned in said clause; and when organized under clause (3) of § 26-1301 said company is hereby authorized, in addition to the loan and mortgage business therein mentioned, to secure, guarantee, and insure individuals, bodies politic, associations, and corporations against loss by or through trustees, agents, servants, or employees, and to guarantee the faithful performance of contracts and obligations of whatever kind entered into by or on the part of any person or persons, association, corporation, or corporations, and against loss of every kind; provided, that any corporations formed under the provisions of this chapter when acting as trustee shall be liable to account for the amounts actually earned by the moneys held by it in trust in addition to the principal so held; but such corporation may be allowed a reasonable compensation for services performed in the care of the trust estate.

(Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 721; June 24, 1980, D.C. Law 3-72, § 207(a), 27 DCR 2155; Nov. 23, 1985, D.C. Law 6-63, § 106(a)(8), as added Apr. 11, 1986, D.C. Law 6-107, § 2(k), 33 DCR 1168; Apr. 9, 1997, D.C. Law 11-255, § 24(c), 44 DCR 1271; Apr. 24, 2007, D.C. Law 16-305, § 38, 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 23(b), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted "intellectual disabilities" for "mental retardation" in (5).

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 26-1333. Security required for performance of fiduciary duties; liability thereon.

No bond or other collateral security, except as hereinafter stated, shall be required from any trust company incorporated under this chapter for and in respect to any trust, nor when appointed trustee, guardian, receiver, personal representative, special administrator, committee of the estate of a person with a mental illness or an intellectual disability, or other fiduciary appointment; but the capital stock subscribed for or taken, and all property owned by said

company and the amount for which said stockholders shall be liable in excess of their stock, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever; and in case of the insolvency or dissolution of said company, the debts due from the said company as trustee, guardian, receiver, personal representative, special administrator, or committee of the estate of a person with mental illness or an intellectual disability or any other fiduciary appointment shall have a preference.

(Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 745; June 24, 1980, D.C. Law 3-72,§ 207(g), 27 DCR 2155; Apr. 24, 2007, D.C. Law 16-305, § 39(b), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 23(c), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation" twice.

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 26-1334. Powers of probate court.

The court having probate jurisdiction, or any judge thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, personal representative, special administrator, committee of the estate of a person with mental illness or an intellectual disability or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any judge thereof if such trustee, guardian, receiver, personal representative, special administrator, committee of the estate of a person with mental illness or an intellectual disability or fiduciary were a natural person. And said court, or any judge thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any judge thereof, may at any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person.

(Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 746; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(4); June 24, 1980, D.C. Law 3-72, § 207(h), 27 DCR 2155; Apr. 24, 2007, D.C. Law 16-305, § 39(c), 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 23(d), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation" both times it appears.

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

TITLE 27. CIVIL RECOVERY BY MERCHANTS, CONTRACTORS, AND SUBCONTRACTORS.

Chapter 1. Merchant's Civil Recovery for Criminal Conduct.

Subchapter I. Merchant's Civil Recovery for Criminal Conduct.

§ 27-101. Definitions.

Editor's notes. — Because of the codification of D.C. Law 20-34 as subchapter II of this chapter, the preexisting text, §§ 27-101 through 27-106, has been designated as subchapter I; and "subchapter" has been substituted for "chapter" in the introductory language of this section.

Subchapter II. Private Contractor and Subcontractor Prompt Payment.

§ 27-131. Definitions.

For the purposes of this subchapter, the term:

(1) "Contract" means:

(A) A construction contract that is an agreement of any kind of nature, express or implied, to provide labor or materials, or both, for demolition, building, renovation, alteration, or maintenance of buildings, roadways, and structures; or

(B) A food service contract that is an agreement of any kind of nature, express or implied, for doing work or furnishing materials, or both.

(2) "Contractor" means a person, entity, or business that has a contract with an owner.

(3) "Subcontractor" means:

(A) A person, entity, or business that has a contract with a contractor;

(B) A person, entity, or business that has a contract with a subcontractor; or

(C) A person, entity, or business that performs work on a construction site for a contractor or another subcontractor or that fabricates materials off-site, from plans and specifications unique to the project, for installation on the construction site.

(4) "Owner" means an owner of the property or a tenant; provided, that the tenant enters into contract with a contractor. The term "owner" does not include a District agency as that term is defined in § 2-221.01(3).

(5) "Undisputed amount" means an amount owed on a contract or a subcontract for which there is no good-faith dispute, including any retainage withheld.

(Nov. 5, 2013, D.C. Law 20-34, § 2, 60 DCR 11812.)

Legislative history of Law 20-34. — Law 20-34, the "Private Contractor and Subcontractor Prompt Payment Act of 2013," was introduced in Council and assigned Bill No. 20-145. The Bill was adopted on first and second readings on June 26, 2013, and July 10, 2013, respectively. Signed by the Mayor on August 2, 2013, it was assigned Act No. 20-148 and transmitted to Congress for its review. D.C. Law 20-34 became effective on November 5, 2013.

§ 27-132. Prompt payments to contractors.

(a) If a construction contract between an owner and contractor does not provide for specific dates and times of payment, the owner shall pay to the contractor undisputed amounts owed under the terms of the written contract within the earlier of:

(1) 15 days after the day on which the occupancy permit is granted;

(2) 15 days after the day on which the owner or the owner's agent takes possession; or

(3) 15 days after an owner receives a contractor's payment request.

(b) If a food service contract between an owner and contractor does not provide for specific dates and times of payment, the owner shall pay to the contractor undisputed amounts owed under the terms of the written contract within the earlier of:

(1) 15 days after the day on which the owner or the owner's agent takes possession; or

(2) 15 days after an owner receives a contractor's payment request.

(c) If a contract provides for specific dates or times of payment, the owner shall pay to the contractor undisputed amounts owed within 7 days after the date or time specified in the contract.

(Nov. 5, 2013, D.C. Law 20-34, § 3, 60 DCR 11812.)

Legislative history of Law 20-34. — See note to § 27-131.

§ 27-133. Failure to make prompt payments to a contractor.

If an owner fails to make prompt payments to a contractor as required by section 3, the owner shall:

(1) Pay interest of 1.5% per month or any part of a month to the contractor on any undisputed amount not paid on time to the contractor; and

(2) If a contractor prevails in a civil action to collect interest penalties from an owner, the contractor shall be awarded its costs and disbursements, including reasonable attorney's fees, incurred in bringing the action.

(Nov. 5, 2013, D.C. Law 20-34, § 4, 60 DCR 11812.)

Legislative history of Law 20-34. — See note to § 27-131.

§ 27-134. Prompt payments to subcontractors.

(a) If a contract is between a contractor and subcontractor, or between a first-tier subcontractor and a second-tier subcontractor, the contractor or subcontractor shall pay undisputed amounts owed to its subcontractor within 7 days after receipt by the contractor or subcontractor of each payment received for its subcontractors' work or materials.

(b) Notwithstanding subsection (a) of this section, conditions of payment to the subcontractor on receipt by the contractor of payment from the owner may not abrogate or waive the right of the subcontractor to:

(1) Claim a mechanics' lien; or

(2) Sue on a contractor's bond.

(c) Any provision of a contract made in violation of subsection (b) of this section is void as against the public policy of the District.

(Nov. 5, 2013, D.C. Law 20-34, § 5, 60 DCR 11812.)

Section references. — This section is referenced in § 27-135.

Legislative history of Law 20-34. — See note to § 27-131.

§ 27-135. Failure to make prompt payments to a subcontractor.

If a contractor fails to make prompt payments to a subcontractor as required by § 27-134, or a first-tier subcontractor fails to make prompt payments to a second-tier subcontractor, the contractor or subcontractor shall:

(1) Pay interest of 1.5% per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor; and

(2) If the subcontractor prevails in a civil action to collect interest penalties from a contractor or first-tier subcontractor, the subcontractor shall be awarded its costs and disbursements, including reasonable attorney's fees, incurred in bringing the action.

(Nov. 5, 2013, D.C. Law 20-34, § 6, 60 DCR 11812.)

Legislative history of Law 20-34. — See note to § 27-131.

§ 27-136. Applicability.

This subchapter shall apply to all contracts entered into on or after October 1, 2013.

(Nov. 5, 2013, D.C. Law 20-34, § 7, 60 DCR 11812.)

Legislative history of Law 20-34. — See note to § 27-131.

TITLE 28. COMMERCIAL INSTRUMENTS AND TRANSACTIONS.

SUBTITLE I. UNIFORM COMMERCIAL CODE

SUBTITLE I. UNIFORM COMMERCIAL CODE.

Article 1. General Provisions.

Part 1. General Provisions.

§ 28:1-101. Short titles.

(a) This subtitle may be cited as the "Uniform Commercial Code".

(b) This article may be cited as the "Uniform Commercial Code — General Provisions".

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 34-2202.09 and § 42-2704.02.

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Editor's notes.

D.C. Law 19-299 amended this article in its entirety, substituting present §§ 28:1-101 through 28:1-310 for former §§ 28:1-101 through 28:1-208. Although similar in many respects to former Article 1, the statute sections in the revised Article are sufficiently different that a detailed explanation of the changes was impracticable; however, where possible, the historical citations from the former sections have been transferred to the new, similar sections. Where appropriate, annotations to former sections have also been retained under corresponding sections in the amended article.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-101.

Changes from former law: Subsection (b) is new. It is added in order to make the structure of Article 1 parallel with that of the other articles of the Uniform Commercial Code.

1. Each other article of the Uniform Commercial Code (except Articles 10 and 11) may also be cited by its own short title. See Sections 2-101, 2A-101, 3-101, 4-101, 4A-101, 5-101, 6-101, 7-101, 8-101, and 9-101.

§ 28:1-102. Scope of article.

This article applies to a transaction to the extent that it is governed by another article of this subtitle.

(Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-519.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: New.

1. This section is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear what has always been the case — the rules in Article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the Uniform Commercial Code. See also Comment 1 to Section 1-301.

§ 28:1-103. Construction of subtitle to promote its purposes and policies; applicability of supplemental principles of law.

(a) This subtitle must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this subtitle, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresenta-

tion, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause, supplement its provisions.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; July 22, 1976, D.C. Law 1-75, § 6, 23 DCR 1183; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., §§ 28:1-102(1), (2), 28:1-103.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-102 (1)-(2); Former Section 1-103.

Changes from former law: This section is derived from subsections (1) and (2) of former Section 1-102 and from former Section 1-103. Subsection (a) of this section combines subsections (1) and (2) of former Section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, its language is the same as subsections (1) and (2) of former Section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, subsection (b) of this section is identical to former Section 1-103. The provisions have been combined in this section to reflect the interrelationship between them.

1. The Uniform Commercial Code is drawn to provide flexibility so that, since it is intended to be a semi-permanent and infrequently-amended piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in the Uniform Commercial Code to be applied by the courts in the light of unforeseen and new circumstances and practices. The proper construction of the Uniform Commercial Code requires, of course, that its interpretation and application be limited to its reason.

Even prior to the enactment of the Uniform Commercial Code, courts were careful to keep broad acts from being hampered in their effects by later acts of limited scope. See *Pacific Wool Growers v. Draper & Co.*, 158 Or. 1, 73 P.2d 1391 (1937), and compare Section 1-104. The courts have often recognized that the policies embodied in an act are applicable in reason to subject-matter that was not expressly included in the language of the act, *Commercial Nat. Bank of New Orleans v. Canal-Louisiana Bank & Trust Co.*, 239 U.S. 520, 36 S.Ct. 194, 60 L.Ed. 417 (1916) (bona fide purchase policy of Uniform Warehouse Receipts Act extended to case not covered but of equivalent nature), and did the same where reason and policy so required, even where the subject-matter had been intentionally excluded from the act in general. *Agar v. Orda*, 264 N.Y. 248, 190 N.E. 479 (1934) (Uniform Sales Act change in seller's remedies applied to contract for sale of choses in action even though the general coverage of that Act was intentionally limited to goods "other than things in action.") They implemented a statutory policy with liberal and useful remedies not provided in the statutory text. They disregarded a statutory limitation of remedy where the reason of the limitation did not apply. *Fiterman v. J. N. Johnson & Co.*, 156 Minn. 201, 194 N.W. 399 (1923) (requirement of return of the goods as a condition to rescission for breach of warranty; also, partial rescission allowed). Nothing in the Uniform Commercial Code stands in the way of the continuance of such action by the courts.

The Uniform Commercial Code should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as also of the Uniform Commercial Code as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

2. Applicability of supplemental principles of law. Subsection (b) states the basic relationship of the Uniform Commercial Code to supplemental bodies of law. The Uniform Commercial Code was drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement it provisions in many important ways. At the same time, the Uniform Commercial Code is the primary source of commercial law rules in areas that it governs, and its rules represent choices made by its drafters and the enacting legislatures about the appropriate policies to be furthered in the transactions it covers. Therefore, while principles of common law and equity may *supplement* provisions of the Uniform Commercial Code, they may not be used to *supplant* its provisions, or the purposes and policies those provisions reflect, unless a specific provision of the Uniform Commercial Code provides otherwise. In the absence of such a provision, the Uniform Commercial Code preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.

The language of subsection (b) is intended to reflect both the concept of supplementation and the concept of preemption. Some courts, however, had difficulty in applying the identical language of former Section 1-103 to determine when other law appropriately may be applied to supplement the Uniform Commercial Code, and when that law has been displaced by the Code. Some decisions applied other law in situations in which that application, while not inconsistent with the text of any particular provision of the Uniform Commercial Code, clearly was inconsistent with the underlying purposes and policies reflected in the relevant provisions of the Code. *See, e.g., Sheerbonnet, Ltd. v. American Express Bank, Ltd.*, 951 F. Supp. 403 (S.D.N.Y. 1995). In part, this difficulty arose from Comment 1 to former Section 1-103, which stated that "this section indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this Act." The "explicitly displaced" language of that Comment did not accurately reflect the proper scope of Uniform Commercial Code preemption, which extends to displacement of other law that is inconsistent with the purposes and policies of the Uniform Commercial Code, as well as with its text.

3. Application of subsection (b) to statutes. The primary focus of Section 1-103 is on the relationship between the Uniform Commercial Code and principles of common law and equity as developed by the courts. State law, however, increasingly is statutory. Not only are there a growing number of state statutes addressing specific issues that come within the scope of the Uniform Commercial Code, but in some States many general principles of common law and equity have been codified. When the other law relating to a matter within the scope of the Uniform Commercial Code is a statute, the principles of subsection (b) remain relevant to the court's analysis of the relationship between that statute and the Uniform Commercial Code, but other principles of statutory interpretation that specifically address the interrelationship between statutes will be relevant as well. In some situations, the principles of subsection (b) still will be determinative. For example, the mere fact that an equitable principle is stated in statutory form rather than in judicial decisions should not change the court's analysis of whether the principle can be used to supplement the Uniform Commercial Code — under subsection (b), equitable principles may supplement provisions of the Uniform Commercial Code only if they are consistent with the purposes and policies of the Uniform Commercial Code as well as its text. In other situations, however, other interpretive principles addressing the interrelationship between statutes may lead the court to conclude that the other statute is controlling, even though it conflicts with the Uniform Commercial Code. This, for example, would be the result in a situation where the other statute was specifically intended to provide additional protection to a class of individuals engaging in transactions covered by the Uniform Commercial Code.

4. Listing not exclusive. The list of sources of supplemental law in subsection (b) is intended to be merely illustrative of the other law that may supplement the Uniform Commercial Code, and is not exclusive. No listing could be exhaustive. Further, the fact that a particular section of the Uniform Commercial Code makes express reference to other law is not intended to suggest the negation of the general application of the principles of subsection (b). Note also that the word "bankruptcy" in subsection (b), continuing the use of that word from former Section 1-103, should be understood not as a specific reference to federal bankruptcy law but, rather as a reference to general principles of insolvency, whether under federal or state law.

§ 28:1-104. Construction against implied repeal.

This subtitle being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-104.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-104.

1. This section embodies the policy that an act that bears evidence of carefully considered permanent regulative intention should not lightly be regarded as impliedly repealed by subsequent legislation. The Uniform Commercial Code, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

§ 28:1-105. Severability.

If any provision or clause of this subtitle or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are severable.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-108.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-108.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-108.

1. This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

§ 28:1-106. Use of singular and plural; gender.

In this subtitle, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-102(5).

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-102(5). See also 1 U.S.C. Section 1.

Changes from former law: Other than minor stylistic changes, this section is identical to former Section 1-102(5).

1. This section makes it clear that the use of singular or plural in the text of the Uniform Commercial Code is generally only a matter of drafting style — singular words may be applied in the plural, and plural words may be applied in the singular. Only when it is clear from the statutory context that the use of the singular or plural does not include the other is this rule inapplicable. *See, e.g.*, Section 9-322.

§ 28:1-107. Section captions.

Section captions are part of this subtitle.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28-4902.

Prior Codifications. — 2001 Ed., § 28:1-109.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-109.

Changes from former law: None.

1. Section captions are a part of the text of the Uniform Commercial Code, and not mere surplusage. This is not the case, however, with respect to subsection headings appearing in Article 9. See Comment 3 to Section 9-101 ("subsection headings are not a part of the official text itself and have not been approved by the sponsors.").

§ 28:1-108. Relation to Electronic Signatures in Global and National Commerce Act.

This subtitle modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: New

1. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.* became effective in 2000. Section 102(a) of that Act provides that a State statute may modify, limit, or supersede the provisions of section 101 of that Act with respect to state law if such statute, *inter alia*, specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, and (i) such alternative procedures or requirements are consistent with Titles I and II of that Act, (ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and (iii) if enacted or adopted after the date of the enactment of that Act, makes specific reference to that Act. Article 1 fulfills the first two of those three criteria; this Section fulfills the third criterion listed above.

2. As stated in this section, however, Article 1 does not modify, limit, or supersede Section 101(c) of the Electronic Signatures in Global and National Commerce Act (requiring affirmative consent from a consumer to electronic delivery of transactional disclosures that are required by state law to be in writing); nor does it authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

Part 2. General Definitions and Principles of Interpretation.

§ 28:1-201. General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this subtitle that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this subtitle that apply to particular articles or parts thereof:

(1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 28:1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. Buyer in ordinary course of business does not include a person that acquires

goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous", with reference to a term, means written, displayed, or presented so that a reasonable person against which it is to operate ought to have noticed it. Whether a term is conspicuous or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this subtitle and as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16)(A) "Document of title" means a record that:

(i) In the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and

(ii) Purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(B) The term "document of title" includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An "electronic document of title" means a document of title evidenced by a record consisting of information stored in an electronic medium. A "tangible document of title" means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term "money" includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to this subtitle.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term "security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. The term "security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 28:2-401, but a buyer may also acquire a security interest by complying with Article 9. Except as otherwise provided in § 28:2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a security interest, but a seller or lessor may also acquire a security interest by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 28:2-401 is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined pursuant to § 28:1-203.

(36) "Send" in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term "unauthorized signature" includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 3, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 2, 39 DCR 9165; Mar. 23, 1995, D.C. Law 10-249, § 2(b)(1), 42 DCR 467; Apr. 9, 1997, D.C. Law 11-255, § 27(jj), 44 DCR 1271; Oct. 26, 2000, D.C. Law 13-201, § 201(b)(2), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103, § 28:4A-105, § 28:10-104, § 28-4915, § 40-102, § 50-601, and § 50-1201.

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201.

Changes from former law: In order to make it clear that all definitions in the Uniform Commercial Code (not just those appearing in Article 1, as stated in former Section 1-201, but also those appearing in other Articles) do not apply if the context otherwise requires, a new subsection (a) to that effect has been added, and the definitions now appear in subsection (b). The reference in subsection (a) to the "context" is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. In other words, the definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. Consider, for example, Sections 3-103(a)(9) (defining "promise," in relevant part, as "a written undertaking to pay money signed by the person undertaking to pay") and 3-303(a)(1) (indicating that an instrument is issued or transferred for value if "the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed." It is clear from the statutory context of the use of the word "promise" in Section 3-303(a)(1) that the term was not used in the sense of its definition in Section 3-103(a)(9). Thus, the Section 3-103(a)(9) definition should not be used to give meaning to the word "promise" in Section 3-303(a).

Some definitions in former Section 1-201 have been reformulated as substantive provisions and have been moved to other sections. See Sections 1-202 (explicating concepts of notice and knowledge formerly addressed in Sections 1-201(25)-(27)), 1-204 (determining when a person gives value for rights, replacing the definition of "value" in former Section 1-201(44)), and 1-206 (addressing the meaning of presumptions, replacing the definitions of "presumption" and "presumed" in former Section 1-201(31)). Similarly, the portion of the definition of "security interest" in former Section 1-201(37) which explained the difference between a security interest and a lease has been relocated to Section 1-203.

Two definitions in former Section 1-201 have been deleted. The definition of "honor" in former Section 1-201(21) has been moved to Section 2-103(1)(b), inasmuch as the definition only applies to the use of the word in Article 2. The definition of "telegram" in former Section 1-201(41) has been deleted because that word no longer appears in the definition of "conspicuous."

Other than minor stylistic changes and renumbering, the remaining definitions in this section are as in former Article 1 except as noted below.

1. "Action." Unchanged from former Section 1-201, which was derived from similar definitions in Section 191, Uniform Negotiable Instruments Law; Section 76, Uniform Sales Act; Section 58, Uniform Warehouse Receipts Act; Section 53, Uniform Bills of Lading Act.

2. "Aggrieved party." Unchanged from former Section 1-201.

3. "Agreement." Derived from former Section 1-201. As used in the Uniform Commercial Code the word is intended to include full recognition of usage of trade, course of dealing, course of performance and the surrounding circumstances as effective parts thereof, and of any agreement permitted under the provisions of the Uniform Commercial Code to displace a stated rule of law. Whether an agreement has legal consequences is determined by applicable provisions of the Uniform Commercial Code and, to the extent provided in Section 1-103, by the law of contracts.

4. "Bank." Derived from Section 4A-104.

5. "Bearer." Unchanged from former Section 1-201, which was derived from Section 191, Uniform Negotiable Instruments Law.

6. "Bill of Lading." Derived from former Section 1-201. The reference to, and definition of, an "airbill" has been deleted as no longer necessary.

7. "Branch." Unchanged from former Section 1-201.

8. "Burden of establishing a fact." Unchanged from former Section 1-201.

9. "Buyer in ordinary course of business." Except for minor stylistic changes, identical to former Section 1-201 (as amended in conjunction with the 1999 revisions to Article 9). The major significance of the phrase lies in Section 2-403 and in the Article on Secured Transactions (Article 9).

The first sentence of paragraph (9) makes clear that a buyer from a pawnbroker cannot be a buyer in ordinary course of business. The second sentence explains what it means to buy "in the ordinary course." The penultimate sentence prevents a buyer that does not have the right to possession as against the seller from being a buyer in ordinary course of business.

Concerning when a buyer obtains possessory rights, see Sections 2-502 and 2-716. However, the penultimate sentence is not intended to affect a buyer's status as a buyer in ordinary course of business in cases (such as a "drop shipment") involving delivery by the seller to a person buying from the buyer or a donee from the buyer. The requirement relates to whether as against the seller the buyer or one taking through the buyer has possessory rights.

10. "Conspicuous." Derived from former Section 1-201(10). This definition states the general standard that to be conspicuous a term ought to be noticed by a reasonable person. Whether a term is conspicuous is an issue for the court. Subparagraphs (A) and (B) set out several methods for making a term conspicuous. Requiring that a term be conspicuous blends a notice function (the term ought to be noticed) and a planning function (giving guidance to the party relying on the term regarding how that result can be achieved). Although these paragraphs indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be expected to be called to it. The statutory language should not be construed to permit a result that is inconsistent with that test.

11. "Consumer." Derived from Section 9-102(a)(25).

12. "Contract." Except for minor stylistic changes, identical to former Section 1-201.

13. "Creditor." Unchanged from former Section 1-201.

14. "Defendant." Except for minor stylistic changes, identical to former Section 1-201, which was derived from Section 76, Uniform Sales Act.

15. "Delivery." Derived from former Section 1-201. The reference to certificated securities has been deleted in light of the more specific treatment of the matter in Section 8-301.

16. "Document of title." Unchanged from former Section 1-201, which was derived from Section 76, Uniform Sales Act. By making it explicit that the obligation or designation of a third party as "bailee" is essential to a document of title, this definition clearly rejects any such result as obtained in *Hixson v. Ward*, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a draft can move through banking channels faster than the goods themselves can reach their destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially as "Documents of Title." The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

Dock warrants were within the Sales Act definition of document of title apparently for the purpose of recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a kind of interim certificate issued by steamship companies upon delivery of the goods at the dock, entitling a designated person to have issued to him at the company's office a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this section regardless of the name given to the instrument.

The goods must be "described," but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this Article.

The definition is broad enough to include an airway bill.

17. "Fault." Derived from former Section 1-201. "Default" has been added to the list of events constituting fault.

18. "Fungible goods." Derived from former Section 1-201. References to securities have been deleted because Article 8 no longer uses the term "fungible" to describe securities. Accordingly, this provision now defines the concept only in the context of goods.

19. "Genuine." Unchanged from former Section 1-201.

20. "Good faith." Former Section 1-201(19) defined "good faith" simply as honesty in fact; the definition contained no element of commercial reasonableness. Initially, that definition applied throughout the Code with only one exception. Former Section 2-103(1)(b) provided that "*in this Article*... good faith in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." This alternative definition was limited in applicability in three ways. First, it applied only to transactions within the scope of Article 2. Second, it applied only to merchants. Third, strictly construed it

applied only to uses of the phrase "good faith" *in Article 2;* thus, so construed it would not define "good faith" for its most important use- the obligation of good faith imposed by former Section 1-203.

Over time, however, amendments to the Uniform Commercial Code brought the Article 2 merchant concept of good faith (subjective honesty and objective commercial reasonableness) into other Articles. First, Article 2A explicitly incorporated the Article 2 standard. See Section 2A-103(7). Then, other Articles broadened the applicability of that standard by adopting it for all parties rather than just for merchants. *See, e.g.*, Sections 3-103(a)(4), 4A-105(a)(6), 8-102(a)(10), and 9-102(a)(43). All of these definitions are comprised of two elements- honesty in fact *and* the observance of reasonable commercial standards of fair dealing. Only revised Article 5 defines "good faith" solely in terms of subjective honesty, and only Article 6 and Article 7 are without definitions of good faith. (It should be noted that, while revised Article 6 did not define good faith, Comment 2 to revised Section 6-102 states that "this Article adopts the definition of 'good faith' in Article 1 in all cases, even when the buyer is a merchant.") Given these developments, it is appropriate to move the broader definition of "good faith" to Article 1. Of course, this definition is subject to the applicability of the narrower definition in revised Article 5.

21. "Holder." Derived from former Section 1-201. The definition has been reorganized for clarity.

22. "Insolvency proceedings." Unchanged from former Section 1-201.

23. "Insolvent." Derived from former Section 1-201. The three tests of insolvency- "generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute as to them," "unable to pay debts as they become due," and "insolvent within the meaning of the federal bankruptcy law"- are expressly set up as alternative tests and must be approached from a commercial standpoint.

24. "Money." Substantively identical to former Section 1-201. The test is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.

25. "Organization." The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

26. "Party." Substantively identical to former Section 1-201. Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to the principal, particular account is taken of that situation.

27. "Person." The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

28. "Present value." This definition was formerly contained within the definition of "security interest" in former Section 1-201(37).

29. "Purchase." Derived from former Section 1-201. The form of definition has been changed from "includes" to "means."

30. "Purchaser." Unchanged from former Section 1-201.

31. "Record." Derived from Section 9-102(a)(69).

32. "Remedy." Unchanged from former Section 1-201. The purpose is to make it clear that both remedy and right (as defined) include those remedial rights of "self help" which are among the most important bodies of rights under the Uniform Commercial Code, remedial rights being those to which an aggrieved party may resort on its own.

33. "Representative." Derived from former Section 1-201. Reorganized, and form changed from "includes" to "means."

34. "Right." Except for minor stylistic changes, identical to former Section 1-201.

35. "Security Interest." The definition is the first paragraph of the definition of "security interest" in former Section 1-201, with minor stylistic changes. The remaining portion of that definition has been moved to Section 1-203. Note that, because of the scope of Article 9, the term includes the interest of certain outright buyers of certain kinds of property.

36. "Send." Derived from former Section 1-201. Compare "notifies".

37. "Signed." Derived from former Section 1-201. Former Section 1-201 referred to "intention to authenticate"; because other articles now use the term "authenticate," the language has been changed to "intention to adopt or accept." The latter formulation is derived from the definition of "authenticate" in Section 9-102(a)(7). This provision refers only to writings, because the term "signed," as used in some articles, refers only to writings. This provision also makes it clear that, as the term "signed" is used in the Uniform Commercial Code, a complete signature is not necessary. The symbol may be printed, stamped or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible situations can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by

the party with present intention to adopt or accept the writing.

38. "State." This is the standard definition of the term used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

39. "Surety." This definition makes it clear that "surety" includes all secondary obligors, not just those whose obligation refers to the person obligated as a surety. As to the nature of secondary obligations generally, see Restatement (Third), Suretyship and Guaranty Section 1 (1996).

40. "Term." Unchanged from former Section 1-201.

41. "Unauthorized signature." Unchanged from former Section 1-201.

42. "Warehouse receipt." Unchanged from former Section 1-201, which was derived from Section 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons.

43. "Written" or "writing." Unchanged from former Section 1-201.

§ 28:1-202. Notice; knowledge.

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88-509, § 4; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:4A-106.

Prior Codifications. — 2001 Ed., § 28:1-201(25)-(27).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Derived from former Section 1-201(25)-(27).

Changes from former law: These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from Section 1-201 to this section. The reference to the "forgotten notice" doctrine has been deleted.

1. Under subsection (a), a person has notice of a fact when, inter alia, the person has received a notification of the fact in question.

2. As provided in subsection (d), the word "notifies" is used when the essential fact is the proper dispatch of the notice, not its receipt. Compare "Send." When the essential fact is the other party's receipt of the notice, that is stated. Subsection (e) states when a notification is received.

3. Subsection (f) makes clear that notice, knowledge, or a notification, although "received," for instance, by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.

§ 28:1-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use

of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The remaining economic life of the goods and reasonably predictable fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 3, 29 DCR 309; July 22, 1992, D.C. Law 9-128, § 2(c)(2), 39 DCR 3830; Oct. 26, 2000, D.C. Law 13-201, § 201(b)(2), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201.

Prior Codifications. — 2001 Ed., § 28:1-201(37).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201(37).

Changes from former law: This section is substantively identical to those portions of former Section 1-201(37) that distinguished "true" leases from security interests, except that the definition of "present value" formerly embedded in Section 1-201(37) has been placed in Section 1-201(28).

1. An interest in personal property or fixtures which secures payment or performance of an obligation is a "security interest." See Section 1-201(37). Security interests are sometimes created by transactions in the form of leases. Because it can be difficult to distinguish leases that create security interests from those that do not, this section provides rules that govern the determination of whether a transaction in the form of a lease creates a security interest.

2. One of the reasons it was decided to codify the law with respect to leases was to resolve an issue that created considerable confusion in the courts: what is a lease? The confusion existed, in part, due to the last two sentences of the definition of security interest in the 1978 Official Text of the Act, Section 1-201(37). The confusion was compounded by the rather considerable change in the federal, state and local tax laws and accounting rules as they relate to leases of goods. The answer is important because the definition of lease determines not only the rights and remedies of the parties to the lease but also those of third parties. If a transaction creates a lease and not a security interest, the lessee's interest in the goods is limited to its leasehold estate; the residual interest in the goods belongs to the lessor. This has significant implications to the lessee's creditors. "On common law theory, the lessor, since he has not parted with title, is entitled to full protection against the lessee's creditors and trustee in bankruptcy_____ " 1 G. Gilmore, *Security Interests in Personal Property* Section 3.6, at 76 (1965).

Under pre-UCC chattel security law there was generally no requirement that the lessor file the lease, a financing statement, or the like, to enforce the lease agreement against the lessee or any third party; the Article on Secured

Transactions (Article 9) did not change the common law in that respect. Coogan, Leasing and the Uniform Commercial Code, in *Equipment Leasing-Leveraged Leasing* 681, 700 n.25, 729 n.80 (2d ed. 1980). The Article on Leases (Article 2A) did not change the law in that respect, except for leases of fixtures. Section 2A-309. An examination of the common law will not provide an adequate answer to the question of what is a lease. The definition of security interest in Section 1-201(37) of the 1978 Official Text of the Act provided that the Article on Secured Transactions (Article 9) governs security interests disguised as leases, *i.e.*, leases intended as security; however, the definition became vague and outmoded.

Lease is defined in Article 2A as a transfer of the right to possession and use of goods for a term, in return for consideration. Section 2A-103(1)(j). The definition continues by stating that the retention or creation of a security interest is not a lease. Thus, the task of sharpening the line between true leases and security interests disguised as leases continues to be a function of this Article.

This section begins where Section 1-201(35) leaves off. It draws a sharper line between leases and security interests disguised as leases to create greater certainty in commercial transactions.

Prior to enactment of the rules now codified in this section, the 1978 Official Text of Section 1-201(37) provided that whether a lease was intended as security (*i.e.*, a security interest disguised as a lease) was to be determined from the facts of each case; however, (a) the inclusion of an option to purchase did not itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee would become, or had the option to become, the owner of the property for no additional consideration, or for a nominal consideration, did make the lease one intended for security.

Reference to the intent of the parties to create a lease or security interest led to unfortunate results. In discovering intent, courts relied upon factors that were thought to be more consistent with sales or loans than leases. Most of these criteria, however, were as applicable to true leases as to security interests. Examples include the typical net lease provisions, a purported lessor's lack of storage facilities or its character as a financing party rather than a dealer in goods. Accordingly, this section contains no reference to the parties' intent.

Subsections (a) and (b) were originally taken from Section 1(2) of the Uniform Conditional Sales Act (act withdrawn 1943), modified to reflect current leasing practice. Thus, reference to the case law prior to the incorporation of those concepts in this article will provide a useful source of precedent. Gilmore, *Security Law, Formalism and Article 9*, 47 Neb.L.Rev. 659, 671 (1968). Whether a transaction creates a lease or a security interest continues to be determined by the facts of each case. Subsection (b) further provides that a transaction creates a security interest if the lessee has an obligation to continue paying consideration for the term of the lease, if the obligation is not terminable by the lessee (thus correcting early statutory gloss, *e.g., In re Royer's Bakery, Inc.*, 1 U.C.C. Rep.Serv. (Callaghan) 342 (Bankr.E.D.Pa. 1963)) and if one of four additional tests is met. The first of these four tests, subparagraph (1), is that the original lease term is equal to or greater than the remaining economic life of the goods. The second of these tests, subparagraph (2), is that the lessee is either bound to renew the lease for the remaining economic life of the goods or to become the owner of the goods. *In re Gehrke Enters.*, 1 Bankr. 647, 651-52 (Bankr.W.D.Wis. 1979). The third of these tests, subparagraph (3), is whether the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration, which is defined later in this section. *In re Celeryvale Transp.*, 44 Bankr. 1007, 1014-15 (Bankr.E.D.Tenn. 1984). The fourth of these tests, subparagraph (4), is whether the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration. All of these tests focus on economics, not the intent of the parties. *In re Berge*, 32 Bankr. 370, 371-73 (Bankr.W.D.Wis. 1983).

The focus on economics is reinforced by subsection (c). It states that a transaction does not create a security interest merely because the transaction has certain characteristics listed therein. Subparagraph (1) has no statutory derivative; it states that a full payout lease does not *per se* create a security interest. *Rushton v. Shea*, 419 F.Supp. 1349, 1365 (D.Del. 1976). Subparagraphs (2) and (3) provide the same regarding the provisions of the typical net lease. *Compare All- States Leasing Co. v. Ochs*, 42 Or.App. 319, 600 P.2d 899 (Ct.App. 1979), *with In re Tillery*, 571 F.2d 1361 (5th Cir.1978). Subparagraph (4) restates and expands the provisions of the 1978 Official Text of Section 1-201(37) to make clear that the option can be to buy or renew. Subparagraphs (5) and (6) treat fixed price options and provide that fair market value must be determined at the time the transaction is entered into. *Compare Arnold Mach. Co. v. Balls*, 624 P.2d 678 (Utah 1981), with *Aoki v. Shepherd Mach. Co.*, 665 F.2d 941 (9th Cir.1982).

The relationship of subsection (b) to subsection (c) deserves to be explored. The fixed price purchase option provides a useful example. A fixed price purchase option in a lease does not of

itself create a security interest. This is particularly true if the fixed price is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed. A security interest is created only if the option price is nominal and the conditions stated in the introduction to the second paragraph of this subsection are met. There is a set of purchase options whose fixed price is less than fair market value but greater than nominal that must be determined on the facts of each case to ascertain whether the transaction in which the option is included creates a lease or a security interest.

It was possible to provide for various other permutations and combinations with respect to options to purchase and renew. For example, this section could have stated a rule to govern the facts of *In re Marhoefer Packing Co.*, 674 F.2d 1139 (7th Cir.1982). This was not done because it would unnecessarily complicate the definition. Further development of this rule is left to the courts.

Subsections (d) and (e) provide definitions and rules of construction.

Emerging Issues Analysis: Professor Margit Livingston on Putative Leases as Article 9 Secured Transactions. In most cases, filing a financing statement will protect the lessor/secured party from other secured parties. However, one type of transaction has bedeviled the courts for many years: the secured transaction disguised as a lease. Professor Livingston examines whether a corporation's possessory repairman's lien take priority over a lessor's security interest.

§ 28:1-204. Value.

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(jj), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-201(44).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201(44).

Changes from former law: Unchanged from former Section 1-201, which was derived from Sections 25, 26, 27, 191, Uniform Negotiable Instruments Law; Section 76, Uniform Sales Act; Section 53, Uniform Bills of Lading Act; Section 58, Uniform Warehouse Receipts Act; Section 22(1), Uniform Stock Transfer Act; Section 1, Uniform Trust Receipts Act. These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from former Section 1-201 to this section.

1. All the Uniform Acts in the commercial law field (except the Uniform Conditional Sales Act) have carried definitions of "value." All those definitions provided that value was any consideration sufficient to support a simple contract, including the taking of property in satisfaction of or as security for a pre-existing claim. Subsections (1), (2), and (4) in substance continue the definitions of "value" in the earlier acts. Subsection (3) makes explicit that "value" is also given in a third situation: where a buyer by taking delivery under a pre-existing contract converts a contingent into a fixed obligation.

This definition is not applicable to Articles 3 and 4, but the express inclusion of immediately available credit as value follows the separate definitions in those Articles. See Sections 4-208, 4-209, 3-303. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is "immediately available" within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit

were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved.

§ 28:1-205. Reasonable time; seasonableness.

(a) Whether a time for taking an action required by this subtitle is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-204(2), (3).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-204(2)-(3).

Changes from former law: This section is derived from subsections (2) and (3) of former Section 1-204. Subsection (1) of that section is now incorporated in Section 1-302(b).

1. Subsection (a) makes it clear that requirements that actions be taken within a "reasonable" time are to be applied in the transactional context of the particular action.

2. Under subsection (b), the agreement that fixes the time need not be part of the main agreement, but may occur separately. Notice also that under the definition of "agreement" (Section 1-201) the circumstances of the transaction, including course of dealing or usages of trade or course of performance may be material. On the question what is a reasonable time these matters will often be important.

§ 28:1-206. Presumptions.

Whenever this subtitle creates a presumption with respect to a fact, or provides that a fact is presumed, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28-4902.

Prior Codifications. — 2001 Ed., § 28:1-201(31).

Legislative history of Law 19-299. — See note to § 28:1-201.

Editor's notes. — The 2013 revision of this article deleted former § 28:1-206. Former § 28:1-206 concerned a statute of frauds for kinds of personal property not otherwise covered, was derived from Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-240, § 3(c), 44 DCR 1087. The other articles of the Uniform Commercial Code make individual determinations as to requirements for memorializing transactions within their scope, so that the primary effect of former Section 1-206 was to impose a writing requirement on sales transactions not otherwise governed by the UCC. Per the official commentary appearing under § 28:1-206: "Deletion of former Section 1-206 did not constitute a recommendation as to whether such sales transactions should be covered by a Statute of Frauds; rather, it reflected determination that there was no need for uniform commercial law to resolve that issue."

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201(31).

Changes from former law: None, other than stylistic changes.

1. Several sections of the Uniform Commercial Code state that there is a "presumption" as to a certain fact, or that the fact is "presumed." This section, derived from the definition appearing in former Section 1-201(31), indicates the effect of those provisions on the proof process.

Part 3. Territorial Applicability and General Rules.

§ 28:1-301. Territorial applicability; parties' power to choose applicable law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a) of this section, and except as provided in subsection (c) of this section, this subtitle applies to transactions bearing an appropriate relation to the District of Columbia.

(c) If one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) Section 28:2-402;

(2) Sections 28:2A-105 and 28:2A-106;

(3) Section 28:4-102;

(4) Section 28:4A-507;

(5) Section 28:5-116;

(6) Section 28:8-110;

(7) Sections 28:9-301 through 9-307.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 2, 29 DCR 309; Apr. 30, 1992, D.C. Law 9-95, § 2(b), 39 DCR 1595; July 22, 1992, D.C. Law 9-128, § 2(c)(1), 39 DCR 3830; Apr. 9, 1997, D.C. Law 11-238, § 3(b), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-239, § 3(b), 44 DCR 963; Apr. 9, 1997, D.C. Law 11-240, § 3(b), 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(ii), 44 DCR 1271; Oct. 26, 2000, D.C. Law 13-201, § 201(b)(1), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-105.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-105.

Summary of changes from former law: Section 1-301, which replaces former Section 1-105, represents a significant rethinking of choice of law issues addressed in that section. The new section reexamines both the power of parties to select the jurisdiction whose law will govern their transaction and the determination of the governing law in the absence of such selection by the parties. With respect to the power to select governing law, the draft affords greater party autonomy than former Section

1-105, but with important safeguards protecting consumer interests and fundamental policies.

Section 1-301 addresses contractual designation of governing law somewhat differently than does former Section 1-105. Former law allowed the parties to any transaction to designate a jurisdiction whose law governs if the transaction bears a "reasonable relation" to that jurisdiction. Section 1-301 deviates from this approach by providing different rules for transactions involving a consumer than for non-consumer transactions, such as "business to business" transactions.

In the context of consumer transactions, the language of Section 1-301, unlike that of former Section 1-105, protects consumers against the possibility of losing the protection of consumer protection rules applicable to the aspects of the transaction governed by the Uniform Commercial Code. In most situations, the relevant consumer protection rules will be those of the consumer's home jurisdiction. A special rule, however, is provided for certain face-to-face sales transactions. (See Comment 3.)

In the context of business-to-business transactions, Section 1-301 generally provides the parties with greater autonomy to designate a jurisdiction whose law will govern than did former Section 1-105, but also provides safeguards against abuse that did not appear in former Section 1-105. In the non-consumer context, following emerging international norms, greater autonomy is provided in subsections (c)(1) and (c)(2) by deleting the former requirement that the transaction bear a "reasonable relation" to the jurisdiction. In the case of wholly domestic transactions, however, the jurisdiction designated must be a State. (See Comment 4.)

An important safeguard not present in former Section 1-105 is found in subsection (f). Subsection (f) provides that the designation of a jurisdiction's law is not effective (even if the transaction bears a reasonable relation to that jurisdiction) to the extent that application of that law would be contrary to a fundamental policy of the jurisdiction whose law would govern in the absence of contractual designation. Application of the law designated may be contrary to a fundamental policy of the State or country whose law would otherwise govern either because of the nature of the law designated or because of the "mandatory" nature of the law that would otherwise apply. (See Comment 6.)

In the absence of an effective contractual designation of governing law, former Section 1-105(1) directed the forum to apply its own law if the transaction bore "an appropriate relation to this state." This direction, however, was frequently ignored by courts. Section 1-301(d) provides that, in the absence of an effective contractual designation, the forum should apply the forum's general choice of law principles, subject to certain special rules in consumer transactions. (See Comments 3 and 7).

1. *Applicability of section.* This section is neither a complete restatement of choice of law principles nor a free-standing choice of law statute. Rather, it is a provision of Article 1 of the Uniform Commercial Code. As such, the scope of its application is limited in two significant ways.

First, this section is subject to Section 1-102, which states the scope of Article 1. As that section indicates, Article 1, and the rules contained therein, apply to transactions to the extent that they are governed by one of the other Articles of the Uniform Commercial Code. Thus, this section does not apply to matters outside the scope of the Uniform Commercial Code, such as a services contract, a credit card agreement, or a contract for the sale of real estate. This limitation was implicit in former Section 1-105, and is made explicit in Section 1-301(b).

Second, subsection (g) provides that this section is subject to the specific choice of law provisions contained in other Articles of the Uniform Commercial Code. Thus, to the extent that a transaction otherwise within the scope of this section also is within the scope of one of those provisions, the rules of that specific provision, rather than of this section, apply.

The following cases illustrate these two limitations on the scope of Section 1-301:

Example 1: A, a resident of Indiana, enters into an agreement with Credit Card Company, a Delaware corporation with its chief executive office located in New York, pursuant to which A agrees to pay Credit Card Company for purchases charged to A's credit card. The agreement contains a provision stating that it is governed by the law of South Dakota. The choice of law rules in Section 1-301 do not apply to this agreement because the agreement is not governed by any of the other Articles of the Uniform Commercial Code.

Example 2: A, a resident of Indiana, maintains a checking account with Bank B, an Ohio banking corporation located in Ohio. At the time that the account was established, Bank B and A entered into a "Bank-Customer Agreement" governing their relationship with respect to the account. The Bank-Customer Agreement contains some provisions that purport to limit the liability of Bank B with respect to its decisions whether to honor or dishonor checks purporting to be drawn on A's account. The Bank-Customer Agreement also contains a provision stating that it is governed by the law of Ohio. The provisions purporting to limit the liability of Bank B deal with issues governed by Article 4. Therefore, determination of the law applicable to those issues (including determina-

tion of the effectiveness of the choice of law clause as it applies to those issues) is within the scope of Section 1-301 as provided in subsection (b). Nonetheless, the rules of Section 1-301 would not apply to that determination because of subsection (g), which states that the choice of law rules in Section 4-102 govern instead.

2. *Contractual choice of law.* This section allows parties broad autonomy, subject to several important limitations, to select the law governing their transaction, even if the transaction does not bear a relation to the State or country whose law is selected. This recognition of party autonomy with respect to governing law has already been established in several Articles of the Uniform Commercial Code (see Sections 4A-507, 5-116, and 8-110) and is consistent with international norms. See, e.g., Inter-American Convention on the Law Applicable to International Contracts, Article 7 (Mexico City 1994); Convention on the Law Applicable to Contracts for the International Sale of Goods, Article 7(1) (The Hague 1986); EC Convention on the Law Applicable to Contractual Obligations, Article 3(1) (Rome 1980).

There are three important limitations on this party autonomy to select governing law. First, a different, and more protective, rule applies in the context of consumer transactions. (See Comment 3). Second, in an entirely domestic transaction, this section does not validate the selection of foreign law. (See Comment 4.) Third, contractual choice of law will not be given effect to the extent that application of the law designated would be contrary to a fundamental policy of the State or country whose law would be applied in the absence of such contractual designation. (See Comment 6).

This Section does not address the ability of parties to designate non-legal codes such as trade codes as the set of rules governing their transaction. The power of parties to make such a designation as part of their agreement is found in the principles of Section 1-302. That Section, allowing parties broad freedom of contract to structure their relations, is adequate for this purpose. This is also the case with respect to the ability of the parties to designate recognized bodies of rules or principles applicable to commercial transactions that are promulgated by intergovernmental organizations such as UNCITRAL or Unidroit. See, e.g., Unidroit Principles of International Commercial Contracts.

3. *Consumer transactions.* If one of the parties is a consumer (as defined in Section 1-201(b)(11)), subsection (e) provides the parties less autonomy to designate the State or country whose law will govern.

First, in the case of a consumer transaction, subsection (e)(1) provides that the transaction must bear a reasonable relation to the State or country designated. Thus, the rules of subsection (c) allowing the parties to choose the law of a jurisdiction to which the transaction bears no relation do not apply to consumer transactions.

Second, subsection (e)(2) provides that application of the law of the State or country determined by the rules of this section (whether or not that State or country was designated by the parties) cannot deprive the consumer of the protection of rules of law which govern matters within the scope of Section 1-301, are protective of consumers, and are not variable by agreement. The phrase "rule of law" is intended to refer to case law as well as statutes and administrative regulations. The requirement that the rule of law be one "governing a matter within the scope of this section" means that, consistent with the scope of Section 1-301, which governs choice of law only with regard to the aspects of a transaction governed by the Uniform Commercial Code, the relevant consumer rules are those that govern those aspects of the transaction. Such rules may be found in the Uniform Commercial Code itself, as are the consumer-protective rules in Part 6 of Article 9, or in other law if that other law governs the UCC aspects of the transaction. See, for example, the rule in Section 2.403 of the Uniform Consumer Credit Code which prohibits certain sellers and lessors from taking negotiable instruments other than checks and provides that a holder is not in good faith if the holder takes a negotiable instrument with notice that it is issued in violation of that section.

With one exception (explained in the next paragraph), the rules of law the protection of which the consumer may not be deprived are those of the jurisdiction in which the consumer principally resides. The jurisdiction in which the consumer principally resides is determined at the time relevant to the particular issue involved. Thus, for example, if the issue is one related to formation of a contract, the relevant consumer protective rules are rules of the jurisdiction in which the consumer principally resided at the time the facts relevant to contract formation occurred, even if the consumer no longer principally resides in that jurisdiction at the time the dispute arises or is litigated. If, on the other hand, the issue is one relating to enforcement of obligations, then the relevant consumer protective rules are those of the jurisdiction in which the consumer principally resides at the time enforcement is sought, even if the consumer did not principally reside in that jurisdiction at the time the transaction was entered into.

In the case of a sale of goods to a consumer, in which the consumer both makes the contract and takes possession of the goods in the same jurisdiction and that jurisdiction is not the consumer's principal residence, the rule in subsection (e)(2)(B) applies. In that situation, the relevant consumer protective rules, the protec-

tion of which the consumer may not be deprived by the choice of law rules of subsections (c) and (d), are those of the State or country in which both the contract is made and the consumer takes delivery of the goods. This rule, adapted from Section 2A-106 and Article 5 of the EC Convention on the Law Applicable to Contractual Obligations, enables a seller of goods engaging in face-to-face transactions to ascertain the consumer protection rules to which those sales are subject, without the necessity of determining the principal residence of each buyer. The reference in subsection (e)(2)(B) to the State or country in which the consumer makes the contract should not be read to incorporate formalistic concepts of where the last event necessary to conclude the contract took place; rather, the intent is to identify the state in which all material steps necessary to enter into the contract were taken by the consumer.

The following examples illustrate the application of Section 1-301(e)(2) in the context of a contractual choice of law provision:

Example 3: Seller, located in State A, agrees to sell goods to Consumer, whose principal residence is in State B. The parties agree that the law of State A would govern this transaction. Seller ships the goods to Consumer in State B. An issue related to contract formation subsequently arises. Under the law of State A, that issue is governed by State A's uniform version of Article 2. Under the law of State B, that issue is governed by a non-uniform rule, protective of consumers and not variable by agreement, that brings about a different result than would occur under the uniform version of Article 2. Under Section 1-301(e)(2)(A), the parties' agreement that the law of State A would govern their transaction cannot deprive Consumer of the protection of State B's consumer protective rule. This is the case whether State B's rule is codified in Article 2 of its Uniform Commercial Code or is found elsewhere in the law of State B.

Example 4: Same facts as Example 3, except that (i) Consumer takes all material steps necessary to enter into the agreement to purchase the goods from Seller, and takes delivery of those goods, while on vacation in State A and (ii) the parties agree that the law of State C (in which Seller's chief executive office is located) would govern their transaction. Under subsections (c)(1) and (e)(1), the designation of the law of State C as governing will be effective so long as the transaction is found to bear a reasonable relation to State C (assuming that the relevant law of State C is not contrary to a fundamental policy of the State whose law would govern in the absence of agreement), but that designation cannot deprive Consumer of the protection of any rule of State A that is within the scope of this section and is both protective of consumers and not variable by agreement. State B's consumer protective rule is not relevant because, under Section 1-301(e)(2)(B), the relevant consumer protective rules are those of the jurisdiction in which the consumer both made the contract and took delivery of the goods — here, State A — rather than those of the jurisdiction in which the consumer principally resides.

It is important to note that subsection (e)(2) applies to all determinations of applicable law in transactions in which one party is a consumer, whether that determination is made under subsection (c) (in cases in which the parties have designated the governing law in their agreement) or subsection (d) (in cases in which the parties have not made such a designation). In the latter situation, application of the otherwise-applicable conflict of laws principles of the forum might lead to application of the laws of a State or country other than that of the consumer's principal residence. In such a case, however, subsection (e)(2) applies to preserve the applicability of consumer protection rules for the benefit of the consumer as described above.

4. *Wholly domestic transactions.* While this Section provides parties broad autonomy to select governing law, that autonomy is limited in the case of wholly domestic transactions. In a "domestic transaction," subsection (c)(1) validates only the designation of the law of a State. A "domestic transaction" is a transaction that does not bear a reasonable relation to a country other than the United States. (See subsection (a)). Thus, in a wholly domestic non-consumer transaction, parties may (subject to the limitations set out in subsections (f) and (g)) designate the law of any State but not the law of a foreign country.

5. *International transactions.* This section provides greater autonomy in the context of international transactions. As defined in subsection (a)(2), a transaction is an "international transaction" if it bears a reasonable relation to a country other than the United States. In a non-consumer international transaction, subsection (c)(2) provides that a designation of the law of any State or country is effective (subject, of course, to the limitations set out in subsections (f) and (g)). It is important to note that the transaction need not bear a relation to the State or country designated if the transaction is international. Thus, for example, in a non-consumer lease of goods in which the lessor is located in Mexico and the lessee is located in Louisiana, a designation of the law of Ireland to govern the transaction would be given effect under this section even though the transaction bears no relation to Ireland. The ability to designate the law of any country in non-consumer international transactions is important in light of the common practice in many commercial contexts of designating the law of a "neutral" jurisdiction or of a jurisdiction whose

law is well-developed. If a country has two or more territorial units in which different systems of law relating to matters within the scope of this section are applicable (as is the case, for example, in Canada and the United Kingdom), subsection (c)(2) should be applied to designation by the parties of the law of one of those territorial units. Thus, for example, subsection (c)(2) should be applied if the parties to a non-consumer international transaction designate the laws of Ontario or Scotland as governing their transaction.

6. *Fundamental policy.* Subsection (f) provides that an agreement designating the governing law will not be given effect to the extent that application of the designated law would be contrary to a fundamental policy of the State or country whose law would otherwise govern. This rule provides a narrow exception to the broad autonomy afforded to parties in subsection (c). One of the prime objectives of contract law is to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract. In this way, certainty and predictability of result are most likely to be secured. See Restatement (Second) Conflict of Laws, Section 187, comment *e*.

Under the fundamental policy doctrine, a court should not refrain from applying the designated law merely because application of that law would lead to a result different than would be obtained under the local law of the State or country whose law would otherwise govern. Rather, the difference must be contrary to a public policy of that jurisdiction that is so substantial that it justifies overriding the concerns for certainty and predictability underlying modern commercial law as well as concerns for judicial economy generally. Thus, application of the designated law will rarely be found to be contrary to a fundamental policy of the State or country whose law would otherwise govern when the difference between the two concerns a requirement, such as a statute of frauds, that relates to formalities, or general rules of contract law, such as those concerned with the need for consideration.

The opinion of Judge Cardozo in *Loucks v. Standard Oil Co. of New York*, 120 N.E. 198 (1918), regarding the related issue of when a state court may decline to apply the law of another state, is a helpful touchstone here:

Our own scheme of legislation may be different. We may even have no legislation on the subject. That is not enough to show that public policy forbids us to enforce the foreign right. A right of action is property. If a foreign statute gives the right, the mere fact that we do not give a like right is no reason for refusing to help the plaintiff in getting what belongs to him. We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home. Similarity of legislation has indeed this importance; its presence shows beyond question that the foreign statute does not offend the local policy. But its absence does not prove the contrary. It is not to be exalted into an indispensable condition. The misleading word 'comity' has been responsible for much of the trouble. It has been fertile in suggesting a discretion unregulated by general principles.

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The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors, unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal. 120 N.E. at 201-02 (citations to authorities omitted).

Application of the designated law may be contrary to a fundamental policy of the State or country whose law would otherwise govern either (i) because the substance of the designated law violates a fundamental principle of justice of that State or country or (ii) because it differs from a rule of that State or country that is "mandatory" in that it *must* be applied in the courts of that State or country without regard to otherwise-applicable choice of law rules of that State or country and without regard to whether the designated law is otherwise offensive. The mandatory rules concept appears in international conventions in this field, *e.g.*, EC Convention on the Law Applicable to Contractual Obligations, although in some cases the concept is applied to authorize the *forum* state to apply *its* mandatory rules, rather than those of the State or country whose law would otherwise govern. The latter situation is not addressed by this section. (See Comment 9.)

It is obvious that a rule that is freely changeable by agreement of the parties under the law of the State or country whose law would otherwise govern cannot be construed as a mandatory rule of that State or country. This does not mean, however, that rules that cannot be changed by agreement under that law are, for that reason alone, mandatory rules. Otherwise, contractual choice of law in the context of the Uniform Commercial Code would be illusory and redundant; the parties would be able to accomplish by choice of law no more than can be accomplished under Section 1-302, which allows variation of otherwise applicable rules by agreement. (Under Section 1-302, the parties could agree to vary the rules that would otherwise govern their transaction by substituting for those rules the rules that would apply if the transaction were governed by the law of the designated State or country without designation of governing law.) Indeed, other than cases in which a mandatory choice of law rule is

established by statute (see, *e.g.*, Sections 9-301 through 9-307, explicitly preserved in subsection (g)), cases in which courts have declined to follow the designated law solely because a rule of the State or country whose law would otherwise govern is mandatory are rare.

7. *Choice of law in the absence of contractual designation.* Subsection (d), which replaces the second sentence of former Section 1-105(1), determines which jurisdiction's law governs a transaction in the absence of an effective contractual choice by the parties. Former Section 1-105(1) provided that the law of the forum (*i.e.*, the Uniform Commercial Code) applied if the transaction bore "an appropriate relation to this state." By using an "appropriate relation" test, rather than, for example, a "most significant relationship" test, Section 1-105(1) expressed a bias in favor of applying the forum's law. This bias, while not universally respected by the courts, was justifiable in light of the uncertainty that existed at the time of drafting as to whether the Uniform Commercial Code would be adopted by all the states; the pro-forum bias would assure that the Uniform Commercial Code would be applied so long as the transaction bore an "appropriate" relation to the forum. Inasmuch as the Uniform Commercial Code has been adopted, at least in part, in all U.S. jurisdictions, the vitality of this point is minimal in the domestic context, and international comity concerns militate against continuing the pro-forum, pro-UCC bias in transnational transactions. Whether the choice is between the law of two jurisdictions that have adopted the Uniform Commercial Code, but whose law differs (because of differences in enacted language or differing judicial interpretations), or between the Uniform Commercial Code and the law of another country, there is no strong justification for directing a court to apply different choice of law principles to that determination than it would apply if the matter were not governed by the Uniform Commercial Code. Similarly, given the variety of choice of law principles applied by the states, it would not be prudent to designate only one such principle as the proper one for transactions governed by the Uniform Commercial Code. Accordingly, in cases in which the parties have not made an effective choice of law, Section 1-301(d) simply directs the forum to apply its ordinary choice of law principles to determine which jurisdiction's law governs, subject to the special rules of Section 1-301(e)(2) with regard to consumer transactions.

8. *Primacy of other Uniform Commercial Code choice of law rules.* Subsection (g), which is essentially identical to former Section 1-105(2), indicates that choice of law rules provided in the other Articles govern when applicable.

9. *Matters not addressed by this section.* As noted in Comment 1, this section is not a complete statement of conflict of laws doctrines applicable in commercial cases. Among the issues this section does not address, and leaves to other law, three in particular deserve mention. First, a forum will occasionally decline to apply the law of a different jurisdiction selected by the parties when application of that law would be contrary to a fundamental policy of the forum jurisdiction, even if it would not be contrary to a fundamental policy of the State or country whose law would govern in the absence of contractual designation. Standards for application of this doctrine relate primarily to concepts of sovereignty rather than commercial law and are thus left to the courts. Second, in determining whether to give effect to the parties' agreement that the law of a particular State or country will govern their relationship, courts must, of necessity, address some issues as to the basic validity of that agreement. These issues might relate, for example, to capacity to contract and absence of duress. This section does not address these issues. Third, this section leaves to other choice of law principles of the forum the issues of whether, and to what extent, the forum will apply the same law to the non-UCC aspects of a transaction that it applies to the aspects of the transaction governed by the Uniform Commercial Code.

§ 28:1-302. Variation by agreement.

(a) Except as otherwise provided in subsection (b) of this section or elsewhere in this subtitle, the effect of provisions of this subtitle may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this subtitle may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this subtitle requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this subtitle of the phrase "unless

otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-518, § 28:2A-527, § 28:2A-528, § 28:4A-204, and § 28:5-103.

Prior Codifications. — 2001 Ed., §§ 28:1-102(3), (4), and 28:1-204(1).

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Sections 1-102(3)-(4) and 1-204(1).

Changes: This section combines the rules from subsections (3) and (4) of former Section 1-102 and subsection (1) of former Section 1-204. No substantive changes are made.

1. Subsection (a) states affirmatively at the outset that freedom of contract is a principle of the Uniform Commercial Code: "the effect" of its provisions may be varied by "agreement." The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Uniform Commercial Code seeks to avoid the type of interference with evolutionary growth found in pre-Code cases such as *Manhattan Co. v. Morgan*, 242 N.Y. 38, 150 N.E. 594 (1926). Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in Section 3-104; nor can they change the meaning of such terms as "bona fide purchaser," "holder in due course," or "due negotiation," as used in the Uniform Commercial Code. But an agreement can change the legal consequences that would otherwise flow from the provisions of the Uniform Commercial Code. "Agreement" here includes the effect given to course of dealing, usage of trade and course of performance by Sections 1-201 and 1-303; the effect of an agreement on the rights of third parties is left to specific provisions of the Uniform Commercial Code and to supplementary principles applicable under Section 1-103. The rights of third parties under Section 9-317 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.

This principle of freedom of contract is subject to specific exceptions found elsewhere in the Uniform Commercial Code and to the general exception stated here. The specific exceptions vary in explicitness: the statute of frauds found in Section 2-201, for example, does not explicitly preclude oral waiver of the requirement of a writing, but a fair reading denies enforcement to such a waiver as part of the "contract" made unenforceable; Section 9-602, on the other hand, is a quite explicit limitation on freedom of contract. Under the exception for "the obligations of good faith, diligence, reasonableness and care prescribed by [the Uniform Commercial Code]," provisions of the Uniform Commercial Code prescribing such obligations are not to be disclaimed. However, the section also recognizes the prevailing practice of having agreements set forth standards by which due diligence is measured and explicitly provides that, in the absence of a showing that the standards manifestly are unreasonable, the agreement controls. In this connection, Section 1-303 incorporating into the agreement prior course of dealing and usages of trade is of particular importance.

Subsection (b) also recognizes that nothing is stronger evidence of a reasonable time than the fixing of such time by a fair agreement between the parties. However, provision is made for disregarding a clause which whether by inadvertence or overreaching fixes a time so unreasonable that it amounts to eliminating all remedy under the contract. The parties are not required to fix the most reasonable time but may fix any time which is not obviously unfair as judged by the time of contracting.

2. An agreement that varies the effect of provisions of the Uniform Commercial Code may do so by stating the rules that will govern in lieu of the provisions varied. Alternatively, the parties may vary the effect of such provisions by stating that their relationship will be governed by recognized bodies of rules or principles applicable to commercial transactions. Such bodies of rules or principles may include, for example, those that are promulgated by intergovernmental authorities such as UNCITRAL or Unidroit (*see, e.g.*, Unidroit Principles of International Commercial Contracts), or non-legal codes such as trade codes.

3. Subsection (c) is intended to make it clear that, as a matter of drafting, phrases such as "unless otherwise agreed" have been used to avoid controversy as to whether the subject matter of a particular section does or does not

fall within the exceptions to subsection (b), but absence of such words contains no negative implication since under subsection (b) the general and residual rule is that the effect of all provisions of the Uniform Commercial Code may be varied by agreement.

§ 28:1-303. Course of performance, course of dealing, and usage of trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage of trade must be proved by facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to § 28:2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201 and § 28:2-202.

Prior Codifications. — 2001 Ed., §§ 28:1-205, 28:2-208, 28:2A-207.

Legislative history of Law 9-128. — For legislative history of D.C. Law 9-128, see Historical and Statutory Notes following § 28:1-108.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Sections 1-205, 2-208, and Section 2A-207.

Changes from former law: This section integrates the "course of performance" concept from Articles 2 and 2A into the principles of former Section 1-205, which deals with course of dealing and usage of trade. In so doing, the section slightly modifies the articulation of the course of performance rules to fit more comfortably with the approach and structure of former Section 1-205. There are also slight modifications to be more consistent with the definition of "agreement" in former Section 1-201(3). It should be noted that a course of performance that might otherwise establish a defense to the obligation of a party to a negotiable instrument is not available as a defense against a holder in due course who took the instrument without notice of that course of performance.

1. The Uniform Commercial Code rejects both the "lay-dictionary" and the "conveyancer's" reading of a commercial agreement. Instead the meaning of the agreement of the parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

2. "Course of dealing," as defined in subsection (b), is restricted, literally, to a sequence of conduct between the parties previous to the agreement. A sequence of conduct after or under the agreement, however, is a "course of performance." "Course of dealing" may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

3. The Uniform Commercial Code deals with "usage of trade" as a factor in reaching the commercial meaning of the agreement that the parties have made. The language used is to be interpreted as meaning what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term "usage of trade," the Uniform Commercial Code expresses its intent to reject those cases which see evidence of "custom" as representing an effort to displace or negate "established rules of law." A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be abrogated by agreement, or by a usage of trade, and those rules of law (such as those in Part 3 of Article 2 on Sales) which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold "unless otherwise agreed" but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be sought for in the usages of trade which furnish the background and give particular meaning to the language used, and are the framework of common understanding controlling any general rules of law which hold only when there is no such understanding.

4. A usage of trade under subsection (c) must have the "regularity of observance" specified. The ancient English tests for "custom" are abandoned in this connection. Therefore, it is not required that a usage of trade be "ancient or immemorial," "universal," or the like. Under the requirement of subsection (c) full recognition is thus available for new usages and for usages currently observed by the great majority of decent dealers, even though dissidents ready to cut corners do not agree. There is room also for proper recognition of usage agreed upon by merchants in trade codes.

5. The policies of the Uniform Commercial Code controlling explicit unconscionable contracts and clauses (Sections 1-304, 2-302) apply to implicit clauses that rest on usage of trade and carry forward the policy underlying the ancient requirement that a custom or usage must be "reasonable." However, the emphasis is shifted. The very fact of commercial acceptance makes out a *prima facie* case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

6. Subsection (d), giving the prescribed effect to usages of which the parties "are or should be aware," reinforces the provision of subsection (c) requiring not universality but only the described "regularity of observance" of the practice or method. This subsection also reinforces the point of subsection (c) that such usages may

be either general to trade or particular to a special branch of trade.

7. Although the definition of "agreement" in Section 1-201 includes the elements of course of performance, course of dealing, and usage of trade, the fact that express reference is made in some sections to those elements is not to be construed as carrying a contrary intent or implication elsewhere. Compare Section 1-302(c).

8. In cases of a well-established line of usage varying from the general rules of the Uniform Commercial Code where the precise amount of the variation has not been worked out into a single standard, the party relying on the usage is entitled, in any event, to the minimum variation demonstrated. The whole is not to be disregarded because no particular line of detail has been established. In case a dominant pattern has been fairly evidenced, the party relying on the usage is entitled under this section to go to the trier of fact on the question of whether such dominant pattern has been incorporated into the agreement.

9. Subsection (g) is intended to insure that this Act's liberal recognition of the needs of commerce in regard to usage of trade shall not be made into an instrument of abuse.

§ 28:1-304. Obligation of good faith.

Every contract or duty within this subtitle imposes an obligation of good faith in its performance and enforcement.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-203.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-203.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-203.

1. This section sets forth a basic principle running throughout the Uniform Commercial Code. The principle is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties. While this duty is explicitly stated in some provisions of the Uniform Commercial Code, the applicability of the duty is broader than merely these situations and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within this Act. It is further implemented by Section 1-303 on course of dealing, course of performance, and usage of trade. This section does not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that a failure to perform or enforce, in good faith, a specific duty or obligation under the contract, constitutes a breach of that contract or makes unavailable, under the particular circumstances, a remedial right or power. This distinction makes it clear that the doctrine of good faith merely directs a court towards interpreting contracts within the commercial context in which they are created, performed, and enforced, and does not create a separate duty of fairness and reasonableness which can be independently breached.

2. "Performance and enforcement" of contracts and duties within the Uniform Commercial Code include the exercise of rights created by the Uniform Commercial Code.

§ 28:1-305. Remedies to be liberally administered.

(a) The remedies provided by this subtitle must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be awarded except as specifically provided in this subtitle or by other rule of law.

(b) Any right or obligation declared by this subtitle is enforceable by action unless the provision declaring it specifies a different and limited effect.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-501.

Prior Codifications. — 2001 Ed., § 28:1-106.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-106.

Changes from former law: Other than changes in the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-106.

1. Subsection (a) is intended to effect three propositions. The first is to negate the possibility of unduly narrow or technical interpretation of remedial provisions by providing that the remedies in the Uniform Commercial Code are to be liberally administered to the end stated in this section. The second is to make it clear that compensatory damages are limited to compensation. They do not include consequential or special damages, or penal damages; and the Uniform Commercial Code elsewhere makes it clear that damages must be minimized. Cf. Sections 1-304, 2-706(1), and 2-712(2). The third purpose of subsection (a) is to reject any doctrine that damages must be calculable with mathematical accuracy. Compensatory damages are often at best approximate: they have to be proved with whatever definiteness and accuracy the facts permit, but no more. Cf. Section 2-204(3).

2. Under subsection (b), any right or obligation described in the Uniform Commercial Code is enforceable by action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. Cf. Sections 1-103, 2-716.

3. "Consequential" or "special" damages and "penal" damages are not defined in the Uniform Commercial Code; rather, these terms are used in the sense in which they are used outside the Uniform Commercial Code.

§ 28:1-306. Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-107.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-107.

Changes from former law: This section changes former law in two respects. First, former Section 1-107, requiring the "delivery" of a "written waiver or renunciation" merges the separate concepts of the aggrieved party's agreement to forego rights and the manifestation of that agreement. This section separates those concepts, and explicitly requires *agreement* of the aggrieved party. Second, the revised section reflects developments in electronic commerce by providing for memorialization in an authenticated record. In this context, a party may "authenticate" a record by (i) signing a record that is a writing or (ii) attaching to or logically associating with a record that is not a writing an electronic sound, symbol or process with the present intent to adopt or accept the record. See Sections 1-201(b)(37) and 9-102(a)(7).

1. This section makes consideration unnecessary to the effective renunciation or waiver of rights or claims arising out of an alleged breach of a commercial contract where the agreement

effecting such renunciation is memorialized in a record authenticated by the aggrieved party. Its provisions, however, must be read in conjunction with the section imposing an obligation of good faith. (Section 1-304).

§ 28:1-307. Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-202.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-202.

Changes from former law: Except for minor stylistic changes, this Section is identical to former Section 1-202.

1. This section supplies judicial recognition for documents that are relied upon as trustworthy by commercial parties.

2. This section is concerned only with documents that have been given a preferred status by the parties themselves who have required their procurement in the agreement, and for this reason the applicability of the section is limited to actions arising out of the contract that authorized or required the document. The list of documents is intended to be illustrative and not exclusive.

3. The provisions of this section go no further than establishing the documents in question as prima facie evidence and leave to the court the ultimate determination of the facts where the accuracy or authenticity of the documents is questioned. In this connection the section calls for a commercially reasonable interpretation.

4. Documents governed by this section need not be writings if records in another medium are generally relied upon in the context.

§ 28:1-308. Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs, promises performance, or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(b)(2), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-207.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-207.

Changes from former law: This section is identical to former Section 1-207.

1. This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment "without prejudice," "under protest," "under reserve," "with reservation of all our rights," and the like. All of these phrases completely reserve all rights within the meaning of this section. The section therefore contemplates that limited as well as general reservations and acceptance by a party may be made "subject to satisfaction of our purchaser," "subject to acceptance by our customers," or the like.

2. This section does not add any new requirement of language of reservation where not already required by law, but merely provides a specific measure on which a party can rely as that party makes or concurs in any interim adjustment in the course of performance. It does not affect or impair the provisions of this Act such as those under which the buyer's remedies for defect survive acceptance without being expressly claimed if notice of the defects is given within a reasonable time. Nor does it disturb the policy of those cases which restrict the effect of a waiver of a defect to reasonable limits under the circumstances, even though no such reservation is expressed.

The section is not addressed to the creation or loss of remedies in the ordinary course of performance but rather to a method of procedure where one party is claiming as of right something which the other believes to be unwarranted.

3. Subsection (b) states that this section does not apply to an accord and satisfaction. Section 3-311 governs if an accord and satisfaction is attempted by tender of a negotiable instrument as stated in that section. If Section 3-311 does not apply, the issue of whether an accord and satisfaction has been effected is determined by the law of contract. Whether or not Section 3-311 applies, this section has no application to an accord and satisfaction.

§ 28:1-309. Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral at will or when the party deems itself insecure, or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-208.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-208.

Changes from former law: Except for minor stylistic changes, this section is identical to former Section 1-208.

1. The common use of acceleration clauses in many transactions governed by the Uniform Commercial Code, including sales of goods on credit, notes payable at a definite time, and secured transactions, raises an issue as to the effect to be given to a clause that seemingly grants the power to accelerate at the whim and caprice of one party. This section is intended to make clear that despite language that might be so construed and which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

Obviously this section has no application to demand instruments or obligations whose very nature permits call at any time with or without reason. This section applies only to an obligation of payment or performance which in the first instance is due at a future date.

§ 28:1-310. Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

(Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-209 [not adopted in D.C.].

Changes from former law: This section is substantively identical to former Section 1-209. The language in that section stating that it "shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it" has been deleted.

1. Billions of dollars of subordinated debt are held by the public and by institutional investors. Commonly, the subordinated debt is subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or non-negotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other "insider" interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms "subordinated obligation," "subordination," and "subordinated creditor."

2. Subordination agreements are enforceable between the parties as contracts; and in the bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor are turned over to the superior creditor. This "turn-over" practice has on occasion been explained in terms of "equitable lien," "equitable assignment," or "constructive trust," but whatever the label the practice is essentially an equitable remedy and does not mean that there is a transaction "that creates a security interest in personal property...by contract" or a "sale of accounts, chattel paper, payment intangibles, or promissory notes" within the meaning of Section 9-109. On the other hand, nothing in this section prevents one creditor from assigning his rights to another creditor of the same debtor in such a way as to create a security interest within Article 9, where the parties so intend.

3. The enforcement of subordination agreements is largely left to supplementary principles under Section 1-103. If the subordinated debt is evidenced by a certificated security, Section 8-202(a) authorizes enforcement against purchasers on terms stated or referred to on the security certificate. If the fact of subordination is noted on a negotiable instrument, a holder under Sections 3-302 and 3-306 is subject to the term because notice precludes him from taking free of the subordination. Sections 3-302(3)(a), 3-306, and 8-317 severely limit the rights of levying creditors of a subordinated creditor in such cases.

ARTICLE 2. SALES.

Part 1. Short Title, General Construction and Subject Matter

Part 2. Form, Formation and Readjustment of Contract

Part 1. Short Title, General Construction and Subject Matter.

§ 28:2-103. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) Repealed.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance". Section 28:2-606.
"Banker's credit". Section 28:2-325.
"Between merchants". Section 28:2-104.
"Cancellation". Section 28:2-106(4).
"Commercial unit". Section 28:2-105.
"Confirmed credit". Section 28:2-325.
"Conforming to contract". Section 28:2-106.
"Contract for sale". Section 28:2-106.
"Cover". Section 28:2-712.
"Entrusting". Section 28:2-403.
"Financing agency". Section 28:2-104.
"Future goods". Section 28:2-105.
"Goods". Section 28:2-105.
"Identification". Section 28:2-501.
"Installment contract". Section 28:2-612.
"Letter of Credit". Section 28:2-325.
"Lot". Section 28:2-105.
"Merchant". Section 28:2-104.
"Overseas". Section 28:2-323.
"Person in position of seller". Section 28:2-707.
"Present sale". Section 28:2-106.
"Sale". Section 28:2-106.
"Sale on approval". Section 28:2-326.

"Sale or return". Section 28:2-326.

"Termination". Section 28:2-106.

(3) Control as provided in § 28:7-106 and the following definitions in other articles apply to this article:

"Check". Section 28:3-104.

"Consignee". Section 28:7-102.

"Consignor". Section 28:7-102.

"Consumer goods". Section 28:9-102.

"Dishonor". Section 28:3-502.

"Draft". Section 28:3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Dec. 30, 1963, 77 Stat. 639, Pub. L. 88-243, § 1; Oct. 26, 2000, D.C. Law 13-201, § 201(c)(1), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 3(a), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-103, § 28:6-102, and § 28:7-102.

Effect of amendments.

The 2013 amendment by D.C. Law 19-299 repealed (1)(b), defining "Good faith"; and added "Control as provided in § 28:7-106 and" at the beginning of the introductory paragraph of (3).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-104. Definitions: "merchant"; "between merchants"; "financing agency".

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 28:2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

(Dec. 30, 1963, 77 Stat. 640, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(b), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-103, § 28:2A-103, and § 28:9-102.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "accompany or are associated with" for "accompany" in the first sentence of (2).

Legislative history of Law 19-299. — See note to § 28:2-103.

Part 2. Form, Formation and Readjustment of Contract.

§ 28:2-202. Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing, or usage of trade (§ 28:1-303); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

(Dec. 30, 1963, 77 Stat. 642, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-316 and § 28:2-326.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (a).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-208. Course of performance or practical construction.

Repealed.

(Dec. 30, 1963, 77 Stat. 644, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(d), 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:2-202.

Editor's notes. — For present law, see § 28:1-303.

§ 28:2-209. Modification, rescission and waiver.

Section references. — This section is referenced in § 28:1-303.

LAW REVIEWS AND JOURNAL COMMENTARIES

Ipse Dixit: The Restatement (Second) of Contracts and the Modern Development of Contract Law. 66 Geo.Wash.L.Rev. 508 (1998).

§ 28:2-210. Delegation of performance; assignment of rights.

CASE NOTES

Actions of assignee.

Higher prices and direct debiting by franchisor were anticipated and permitted by original franchise contract, and thus assignment did not materially increase burdens or risks for franchisee with respect to those issues, and did not violate District of Columbia Retail Service Station Amendment Act (RSSA), where that contract stated that prices were "subject to change at any time and without notice," method of payment could include automated direct debit "or any other method as designate[d] from time to time," franchisor could assign any or all of its rights or interests, without restriction, to any person or entity, and assignment by franchisor could affect franchisee's rights and obligations under agreement to extent that assignee had policies or programs different from franchisor's. Metroil, Inc. v. ExxonMobil Oil Corp., 672 F.3d 1108, 2012 U.S. App. LEXIS 5712 (C.A.D.C. 2012).

Part 3. General Obligation and Construction of Contract.

§ 28:2-310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 28:2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) of this section then payment is due regardless of where the goods are to be received at the time and place at which the buyer is to receive delivery of the tangible documents or at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

(Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(e), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (c).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned

Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-316.01. Limitation of exclusion or modification of warranties consumers.

LAW REVIEWS AND JOURNAL COMMENTARIES

Commercial Law: Changes in Implied Warranty Disclaimers. 32 Cath.U.L.Rev. 1009, (1983).

§ 28:2-323. Form of bill of lading required in overseas shipment; "overseas".

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 28:2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

(Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(f), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-103, § 28:2-319, and § 28:2-503.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "a tangible bill of lading" for "a bill of lading" in the first sentence of (2).

Legislative history of Law 19-299. — See note to § 28:2-310.

Part 4. Title, Creditors and Good Faith Purchasers.

§ 28:2-401. Passing of title; reservation for security; limited application of this section.

Each provision of this article with regard to the rights, obligations and

remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28:2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents, and, if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

(Dec. 30, 1963, 77 Stat. 653, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(g), 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201, § 28:2-106, § 28:9-102, § 28:9-109, § 28:9-110, and § 28:9-309.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (3).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Part 5. Performance.

§ 28:2-503. Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a record directing to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form except as provided in this article with respect to bills of lading in a set (subsection (2) of section 28:2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

(Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(h), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-319 and § 28:2-509.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299, in (4)(b), substituted "record directing" for "written direction to" and inserted "except as otherwise provided in Article 9" following "seasonably objects, and"; and substituted "accompanying or associated with" for "accompanying" in (5)(b).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-505. Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession or control of the goods as security but except in a case of conditional delivery (subsection (2) of section 28:2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

(Dec. 30, 1963, 77 Stat. 656, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(i), 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201 and § 28:2-509.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "possession or control" for "possession" twice in (1)(b).

Legislative history of Law 19-299. — See note to § 28:2-503.

§ 28:2-506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

(Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(j), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 deleted "on its face" following "regular" at the end of (2).

Legislative history of Law 19-299. — See note to § 28:2-503.

§ 28:2-509. Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 28:2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a non-negotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of section 28:2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 28:2-327) and on effect of breach on risk of loss (section 28:2-510).

(Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(k), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "receipt of possession or control of "for "receipt of" in (2)(a) and (2)(c); and substituted "direction to deliver in a record" for "written direction to deliver" in (2)(c).

Legislative history of Law 19-299. — See note to § 28:2-503.

Part 6. Breach, Repudiation and Excuse.

§ 28:2-605. Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payments against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

(Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(l), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "apparent in" for "apparent on the face of" in (2).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Part 7. Remedies.

§ 28:2-705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 28:2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgement to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

(Dec. 30, 1963, 77 Stat. 665, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, §§ 3(m), 3(n), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-702, § 28:2-703, § 28:2-707, § 28:7-403, and § 28:7-504.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "a warehouse" for "warehouseman" in (2)(c).

The 2013 amendment by D.C. Law 19-299 inserted "of possession or control" following "surrender" in (3)(c).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Legislative history of Law 19-299. — See note to § 28:2-705.

ARTICLE 2A. LEASES.

Part 1. General Provisions

Part 1. General Provisions.

§ 28:2A-103. Definitions and index of definitions.

(a) In this article unless the context otherwise requires:

(1) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(3) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(4) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who

takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(6) "Fault" means wrongful act, omission, breach, or default.

(7) "Finance lease" means a lease with respect to which:

(A) The lessor does not select, manufacture, or supply the goods;

(B) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(C) One of the following occurs:

(i) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(ii) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(iii) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimer of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(iv) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(8) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 28:2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(9) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(10) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(11) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(12) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(13) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(14) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(15) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(16) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(17) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(18) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(19) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(20) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(21) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(22) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(23) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(24) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(25) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(26) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(b) Other definitions applying to this article and the sections in which they appear are:

"Accessions". § 28:2A-310(a).

"Construction mortgage". § 28:2A-309(a)(4).

"Encumbrance". § 28:2A-309(a)(5).

"Fixture filing". § 28:2A-309(a)(2).

"Fixtures". § 28:2A-309(a)(1).

"Purchase money lease". § 28:2A-309(a)(3).

(c) The following definitions in other articles apply to this article:

"Account". § 28:9-102(a)(2).

"Between merchants". § 28:2-104(3).

"Buyer". § 28:2-103(1)(a).

"Chattel paper". § 28:9-102(a)(11).

"Consumer goods". § 28:9-102(a)(23).

"Document." § 28:9-102(a)(30).

"Entrusting". § 28:2-403(3).

"General intangibles". § 28:9-102(a)(42).

"Instrument". § 28:9-102(a)(47).

"Merchant". § 28:2-104(1).

"Mortgage". § 28:9-102(a)(55).

"Pursuant to commitment". § 28:9-102(a)(69).

"Receipt". § 28:2-103(1)(c).

"Sale". § 28:2-106(1).

"Sale on approval". § 28:2-326.

"Sale or return". § 28:2-326.

"Seller". § 28:2-103(1)(d).

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Oct. 26, 2000, D.C. Law 13-201, § 201(d)(1), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 4(a), 60 DCR 2634; May 1, 2013, D.C. Law 19-302, § 3, 60 DCR 2688.)

Section references. — This section is referenced in § 28:7-102 and § 28:9-102.

Effect of amendments.

The 2013 amendment by D.C. Law 19-299 substituted "acquiring goods" for "receiving goods" in the second sentence of (a)(1) and (a)(15); and deleted the phrase " 'Good faith'. § 28:2-103(1)(b)" in (c).

The 2013 amendment by D.C. Law 19-302 substituted "§ 28:9-102(a)(69)" for "§ 28:9-102(a)(68)" in the definition of "Pursuant to commitment" in (c).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned

Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Legislative history of Law 19-302. — Law 19-302, the "Uniform Commercial Code Article 9 Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-222. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 5, 2013, it was assigned Act No. 19-669 and transmitted to Congress for its review. D.C. Law 19-302 became effective on May 1, 2013.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Part 2. Formation and Construction of Lease Contract.

§ 28:2A-207. Course of performance or practical construction.

Repealed.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(b), 60 DCR 2634.)

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Editor's notes. — For present law, see § 28:1-303.

Part 5. Default.

Subpart A. In General.

§ 28:2A-501. Default: procedure.

(a) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(b) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this Article, as provided in the lease agreement.

(c) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(d) Except as otherwise provided in § 28:1-305(a) or this article or the lease agreement, the rights and remedies referred to in subsections (b) and (c) of this section are cumulative.

(e) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; May 16, 1995, D.C. Law

10-255, § 22, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 7(d), 42 DCR 1547; Apr. 9, 1997, D.C. Law 11-255, § 27(rr), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 4(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-303.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "§ 28:1-305(a)" for "§ 28:1-106" in (d).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Subpart B. Default by Lessor.

§ 28:2A-514. Waiver of lessee's objections.

(a) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(1) If, stated seasonably, the lessor or the supplier could have cured it (§ 28:2A-513); or

(2) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(b) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(d), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "apparent in the documents" for "apparent on the face of the documents" in (b).

Legislative history of Law 19-299. — See note to § 28:2A-501.

§ 28:2A-518. Cover; substitute goods.

(a) After default by a lessor under the lease contract of the type described in § 28:2A-508(a), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§ 28:1-302 and § 28:2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreements, of the rent under the new lease agreement applicable to the period of the new lease which is comparable to the then remaining term of the original

lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(c) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (b) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and § 28:2A-519 governs.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(e), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-508 and § 28:2A-519.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "§ 28:1-302" for "§ 28:1-102(3)" in (b).

Legislative history of Law 19-299. — See note to § 28:2A-501.

§ 28:2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§§ 28:1-102(b) and 28:2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under § 28:2A-518(b), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(b) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(c) Except as otherwise agreed, if the lessee has accepted goods and given notification (§ 28:2A-516(c)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(d) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(f), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-507, § 28:2A-508, and § 28:2A-518.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "§ 28:1-302(2)" for "§ 28:1-102(3)" near the beginning of (a).

Legislative history of Law 19-299. — See note to § 28:2A-501.

Subpart C. Default by Lessee.

§ 28:2A-526. Lessor's stoppage of delivery in transit or otherwise.

(a) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(b) In pursuing its remedies under subsection (a) of this section, the lessor may stop delivery until:

(1) Receipt of the goods by the lessee;

(2) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(3) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(c)(1) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(2) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(3) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(g), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-504, § 28:2A-523, § 28:2A-527, § 28:7-403, and § 28:7-504.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "a warehouse" for "warehouseman" in (b)(3).

Legislative history of Law 19-299. — See note to § 28:2A-501.

§ 28:2A-527. Lessor's rights to dispose of goods.

(a) After a default by a lessee under the lease contract of the type described in § 28:2A-523(a) or § 28:2A-523(c) or after the lessor refuses to deliver or takes possession of goods (§ 28:2A-525 or § 28:2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(b) Except as otherwise provided with respect to damages liquidated in the

lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§ 28:1-302 and § 28:2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under § 28:2A-530, less expenses saved in consequence of the lessee's default.

(c) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (b) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and § 28:2A-528 governs.

(d) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(e) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (§ 28:2A-508(e)).

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; July 25, 1995, D.C. Law 11-30, § 7(e), 42 DCR 1547; Apr. 27, 2013, D.C. Law 19-299, § 4(h), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-304, § 28:2A-508, § 28:2A-523, § 28:2A-524, § 28:2A-525, § 28:2A-528, and § 28:2A-529.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "§ 28:1-302" for "§ 28:1-102(3)" in (b).

Legislative history of Law 19-299. — See note to § 28:2A-501.

§ 28:2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§§ 28:1-302 and 28:2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under § 28:2A-527(b), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in § 28:2A-523(c)(1), or, if agreed, for other default of the lessee (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the

goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under § 28:2A-530, less expenses saved in consequence of the lessee's default.

(b) If the measure of damages provided in subsection (a) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under § 28:2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(i), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-507, § 28:2A-523, § 28:2A-527, and § 28:2A-529.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "§ 28:1-302" for "§ 28:1-102(3)" in (a).

Legislative history of Law 19-299. — See note to § 28:2A-501.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

Part 1. General Provisions and Definitions.

§ 28:3-103. Definitions.

(a) In this article, the term:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.

(4) "Drawee" means a person ordered in a draft to make payment.

(5) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(6) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(7) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(8) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Article 4.

(9) "Party" means a party to an instrument.

(10) "Principal obligor", with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this article.

(11) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(12) "Prove" with respect to a fact means to meet the burden of establishing the fact under § 28:1-201(b)(8).

(13) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(14) "Remotely created consumer item" means an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(15) "Secondary obligor", with respect to an instrument, means:

(A) An indorser or an accommodation party;

(B) A drawer having the obligation described in § 28:3-414(d); or

(C) Any other party to the instrument that has recourse against another party to the instrument pursuant to § 28:3-116(b).

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance".	Section 28:3-409.
"Accommodated party".	Section 28:3-419.
"Accommodation party".	Section 28:3-419.
"Account".	Section 28:4-104.
"Alteration".	Section 28:3-407.
"Anomalous indorsement".	Section 28:3-205.

"Blank indorsement".	Section 28:3-205.
"Cashier's check".	Section 28:3-104.
"Certificate of deposit".	Section 28:3-104.
"Certified check".	Section 28:3-409.
"Check".	Section 28:3-104.
"Consideration".	Section 28:3-303.
"Draft".	Section 28:3-104.
"Holder in due course".	Section 28:3-302.
"Incomplete instrument".	Section 28:3-115.
"Indorsement".	Section 28:3-204.
"Indorser".	Section 28:3-204.
"Instrument".	Section 28:3-104.
"Issue".	Section 28:3-105.
"Issuer".	Section 28:3-105.
"Negotiable instrument".	Section 28:3-104.
"Negotiation".	Section 28:3-201.
"Note".	Section 28:3-104.
"Payable at a definite time".	Section 28:3-108.
"Payable on demand".	Section 28:3-108.
"Payable to bearer".	Section 28:3-109.
"Payable to order".	Section 28:3-109.
"Payment".	Section 28:3-602.
"Person entitled to enforce".	Section 28:3-301.
"Presentment".	Section 28:3-501.
"Reacquisition".	Section 28:3-207.
"Special indorsement".	Section 28:3-205.
"Teller's check".	Section 28:3-104.
"Transfer of instrument".	Section 28:3-203.
"Traveler's check".	Section 28:3-104.
"Value".	Section 28:3-303.

(c) The following definitions in other articles apply to this article:

"Banking day".	Section 28:4-104.
"Clearing house".	Section 28:4-104.
"Collecting bank".	Section 28:4-105.
"Depositary bank".	Section 28:4-105.
"Documentary draft".	Section 28:4-104.
"Intermediary bank".	Section 28:4-105.
"Item".	Section 28:4-104.
"Payor bank".	Section 28:4-105.
"Suspends payments".	Section 28:4-104.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Dec. 30, 1963, 77 Stat. 672, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(b), 60 DCR 2634.)

Section references. — This section is referenced in § 28:4-104 and § 28:9-102.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (a); added the definition of "Account" in (b); and deleted the definition of "Bank" in (c).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-106. Unconditional promise or order.

(a) Except as provided in this section, for the purposes of section 28:3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 28:3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 28:3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

(Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-302.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "record" for "writing" throughout (a) and (b).

Legislative history of Law 19-299. — See note to § 28:3-103.

§ 28:3-116. Joint and several liability; contribution.

Repealed.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(d), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103.

Legislative history of Law 19-299. — See note to § 28:3-103.

§ 28:3-119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this article or Article 4, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the 2 litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(e), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "notice of the litigation in a record" for "written notice of the litigation" in the first sentence.

Legislative history of Law 19-299. — See note to § 28:3-103.

Part 3. Enforcement of Instruments.

§ 28:3-305. Defenses and claims in recoupment.

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1) of this section, but is not subject to defenses of the obligor stated in subsection (a)(2) of this section or claims in recoupment stated in subsection (a)(3) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert

against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 28:3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) In a consumer transaction, if law other than this article requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement:

(1) The instrument has the same effect as if the instrument included such a statement;

(2) The issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and

(3) The extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(f) This section is subject to law other than this article that establishes a different rule for consumer transactions.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(f), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-302, § 28:4-207, and § 28:9-403.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "otherwise provided in this section" for "stated in subsection (b) of this section" in (a); and added (e) and (f).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-309. Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) The person seeking to enforce the instrument:

(A) Was entitled to enforce the instrument when loss of possession occurred; or

(B) Has directly or indirectly acquired ownership of the instrument

from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) The loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 28:3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(g), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-301 and § 28:3-312.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (a).

Legislative history of Law 19-299. — See note to § 28:3-305.

§ 28:3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

(a) For the purposes of this section, the term:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a statement made in a record, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check

or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to § 28:4-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or § 28:3-309.

(Apr. 9, 1997, D.C. Law 11-237, § 2(b), 44 DCR 920; Apr. 27, 2013, D.C. Law 19-299, § 5(h), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "a statement, made in a record" for "a written statement, made".

Legislative history of Law 19-299. — See note to § 28:3-305.

Part 4. Liability of Parties.

§ 28:3-416. Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) With respect to a remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A person to whom the warranties under subsection (a) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(i), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (a)(6); and made related changes.

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-417. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered;

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28:3-404 or 28:3-405 or the drawer is precluded under section 28:3-406 or 28:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(j), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-418.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (a)(4);

and made related changes.

Legislative history of Law 19-299. — See note to § 28:3-416.

§ 28:3-419. Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 28:3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(d-1) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party

to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(k), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103, § 28:3-415, and § 28:3-605.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (d-1); and rewrote (e).

Legislative history of Law 19-299. — See note to § 28:3-416.

Part 6. Discharge and Payment.

§ 28:3-602. Payment.

(a) Subject to subsection (e) of this section, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument to a person entitled to enforce the instrument.

(b) Subject to subsection (e) of this section, a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee, reasonably identifies the transferred note, and provides an address at which subsequent payments are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (c) of this section even if the party obliged to pay the note has received a notification under this section.

(c) Subject to subsection (e) of this section, to the extent of a payment under subsections (a) or (b) of this section, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under § 28:3-306 by another person.

(d) Subject to subsection (e) of this section, a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) of this section after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged under subsections (a) through (d) of this section if:

(1) A claim to the instrument under § 28:3-306 is enforceable against the party receiving payment and either payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or, in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted,

from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(f) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

(Dec. 30, 1963, 77 Stat. 691, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(l), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote the section.

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-604. Discharge by cancellation or renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the indorsement.

(c) In this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

(Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(m), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "record" for "writing" in (a); and added (c).

Legislative history of Law 19-299. — See note to § 28:3-602.

§ 28:3-605. Discharge of secondary obligors.

(a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a

secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this article.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor may:

(A) Perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended; or

(B) Treat the time for performance of its obligations as having been extended correspondingly; except, that the time may not be treated as having been extended correspondingly if the terms of the extension permit the person entitled to enforce the instrument to retain the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The

modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed under Article 9 or other law to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subsection (a)(3), (b), (c), or (d) of this section unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under § 28:3-419(c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) The person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) The recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i) of this section, a secondary obligor asserting discharge under this section has the burden of persuasion

both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

(Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(n), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-419.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote the section.

Legislative history of Law 19-299. — See note to § 28:3-602.